Petition

81-5483

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THIS IS A CAPITAL CASE

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1981

No.

BILLY WOODARD,

Petitioner,

v.

THE STATE OF ARKANSAS,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ARKANSAS

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September 26, 1981

QUESTIONS PRESENTED

1. WHETHER THE ARKANSAS SUPREME COURT ERRONEOUSLY INTERPRETED THIS COURT'S DECISION IN DUNAWAY V. NEW YORK AND IMPROPERLY PERMITTED THE TRIAL COURT'S USE OF PETITIONER'S CONFESSIONS, WHICH WERE THE "FRUIT" OF AN ILLEGAL INVESTIGATORY SEIZURE WITHOUT PROBABLE CAUSE IN VIOLATION OF THE FOURTH AND FOURTEENTH AMENDMENTS.

2. WHETHER THE ARKANSAS SUPREME COURT FAILED TO APPLY THE DOCTRINE OF WITHERSPOON V. ILLINOIS AND VIOLATED THE SIXTH AND FOURTEENTH AMENDMENTS IN UPHOLDING THE TRIAL COURT'S EXCLUSION FOR CAUSE OF DEATH-SCRUPLED VENIREMEN FROM THE JURY PANEL.

3. WHETHER THE ARKANSAS SUPREME COURT CONTRADICTED THIS COURT'S RECENT DECISION IN ESTELLE V. SMITH BY PERMITTING THE TRIAL COURT TO ADMIT DAMAGING TESTIMONY BY A REPORTER CONCERNING ADMISSIONS DURING THE COURSE OF AN INTERVIEW CONDUCTED WHILE PETITIONER WAS IN POLICE CUSTODY.

4. WHETHER THE ARKANSAS SUPREME COURT'S APPLICATION OF A LOWER STANDARD OF REVIEW TO THE PENALTY PHASE OF THE TRIAL THAN TO THE GUILT-INNOCENCE PHASE VIOLATED THIS COURT'S MANDATE IN BULLINGTON V. MISSOURI.*

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* Petitioner and the State of Arkansas are the only parties to this proceeding.

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BILLY WOODARD,

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THE STATE OF ARKANSAS,

Respondent.

PETITION FOR WRIT OF CERTIORARI

TO THE SUPREME COURT OF ARKANSAS

Petitioner Billy Woodard, convicted of capital felony murder and sentenced to die in the electric chair, respectfully prays that a writ of certiorari issue to review the opinion and order of the Supreme Court of Arkansas entered in this proceeding on June 29, 1981 denying his request to proceed under the Arkansas collateral review procedure, Arkansas Rule of Criminal Procedure 37.

As an alternative to full briefing and oral argument in this case, Petitioner submits that it is appropriate for this Court to vacate the sentence and remand the case to the Supreme Court of Arkansas for reconsideration in light of

Dunaway v. New York, 442 U.S. 200 (1979); Witherspoon v. Illinois, 391 U.S. 510 (1968); Estelle v. Smith, ____ U.S. ____, 101 S.Ct. 1866 (1981); and Bullington v. Mississippi, ____ U.S. ____, 101 S.Ct. 1852 (1981).

OPINION BELOW

The opinion and order of the Supreme Court of Arkansas denying permission to proceed under Rule 37 is not reported. A copy is attached as Appendix A hereto. The Arkansas Supreme Court's opinion affirming Petitioner's conviction and sentence on direct appeal is reported at 261 Ark. 895, 553 S.W.2d 259 (1977). A copy is attached hereto as Appendix B. There was no intermediate appellate court review.

JURISDICTION

This Court's jurisdiction is invoked under 28 U.S.C. §1257(3) and Part V of the Rules of this Court, Petitioner asserting here and having asserted below a deprivation of rights secured by the Constitution of the United States. The opinion and order of the Supreme Court of Arkansas were entered on June 29, 1981. On July 9, Petitioner sought a stay of his execution, set for August 6, from the Arkansas Supreme Court. That application was denied on July 20, 1981. On July 23, Petitioner applied to Mr. Justice Blackmun for a stay of his execution pending the filing of a petition for certiorari. That application was granted on July 27, and on August 14, Mr. Justice Blackmun extended the time for filing this petition to and including September 26, 1981.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

CONSTITUTIONAL PROVISIONS

The Fourth Amendment provides, in relevant part:

"The right of the people to be secure . . . against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

The Fifth Amendment provides, in relevant part:

"No person shall . . . be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law. . . ."

The Sixth Amendment provides, in relevant part:

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed . . . and to have the Assistance of Counsel for his defense."

The Fourteenth Amendment provides, in relevant part:

> "No state shall . . . deprive any person of life, liberty, or property, without due process of law. . . ."

STATUTORY PROVISIONS

Act 438 of 1973 (the "1973 Arkansas Death Statute") passed by the Arkansas Legislature with an effective date of April 24, 1973, and codified at Ark. Stat. Ann. §§41-4701 et seq. (Supp. 1973), states, in relevant part, as follows:

> 41-4701. Felonies are classified for the purpose of sentence, and for any other purpose specifically provided by law, into the following categories:
>
> (a) capital felony;
> (b) life felony without parole;
> (c) life felony; and
> (d) felony.
>
> 41-4702. The following crimes shall be capital felonies. . . .
>
> (a) the unlawful killing of a human being when committed by a person engaged in the perpetration of or in the attempt to perpetrate arson, rape, robbery, burglary, kidnapping, or mass transit piracy; . . .
>
> 41-4703. When any person shall be convicted of any capital felony . . . and the jury in its discretion finds mitigating circumstances . . . and determines that these mitigating circumstances preclude the imposition of death by electrocution, then such crime shall be a life felony without parole . . .
>
> 41-4706. A person convicted of a capital felony shall be punished by death by electrocution or by life imprisonment without parole. . . .

41-4710. A person charged with a capital felony shall be given a jury trial and sentenced pursuant to the following procedures.

(a) After presentation of all evidence and witnesses to be offered by the State and/or the Defendant as to the guilt or innocence of the defendant, instructions to the jury, and argument by counsel, the jury shall retire and consider the case.

(b) If the jury finds the defendant guilty of a capital felony, the same jury shall sit again to determine whether the defendant shall be sentenced to death or life imprisonment without parole.

(c) In the proceeding to determine sentence, evidence may be presented as to any matters relevant to sentence and shall include matters relating to any of the aggravating or mitigating circumstances enumerated in Sections II [§41-4711] and 12 [§41-4712] of this Act. The State and the Defendant or his counsel shall be permitted to present argument for or against the sentence of death.

(d) After hearing all the evidence as to sentence, the jury shall again retire and render a sentence based upon the following:

(i) whether beyond a reasonable doubt sufficient aggravating circumstances, as enumerated in Section 11 [§41-4711] of this Act, exist to justify a sentence of death;

(ii) whether sufficient mitigating circumstances as enumerated in Section 12 [§41-4712] of this Act exist to justify a sentence of life imprisonment without parole.

(e) The jury in rendering its verdict shall set forth in writing its findings as to each of the aggravating or mitigating circumstances enumerated in Sections 11 [§41-4711] and 12 [§41-4712] hereof and shall set forth in writing its conclusion:

(i) that sufficient aggravating circumstances (do or do not) exist beyond a reasonable doubt to justify a sentence of death;

(ii) that there are (or are not) sufficient mitigating circumstances to outweigh the aggravating circumstances.

(f) If the jury does not make the findings requiring the death sentence by unanimous verdict, the court shall impose sentence of life imprisonment without parole.

41-4711. Aggravating circumstances shall be limited to the following:

(a) the capital felony was committed by a person under sentence of imprisonment;

(b) the defendant was previously convicted of another capital felony or of a felony involving the use or threat of violence to the person;

(c) the defendant in the commission of the capital felony knowingly created great risk of death to one (1) or more persons in addition to the victim;

(d) the capital felony was committed for the purpose of avoiding or preventing a lawful arrest or effecting an escape from custody;

(e) the capital felony was committed for pecuniary gain; and

(f) the capital felony was committed for the purpose of disrupting or hindering the lawful exercise of any governmental function, political function, or the enforcement of laws.

41-4712. Mitigating circumstances shall be the following:

(a) the capital felony was committed while the defendant was under extreme mental or emotional disturbance;

(b) the capital felony was commited while the defendant was acting under unusual pressures or influences, or under the domination of another person;

(c) the capital felony was committed while the capacity of the defendant to appreciate the wrongfulness of his conduct, or to conform his conduct to the requirements of law was impaired as a result of mental disease or defect, intoxication or drug abuse;

(d) the youth of the defendant at the time of the commission of the capital felony; or

(e) the capital felony was committed by another person and the defendant was an accomplice or his participation relatively minor.

41-4713. Nothing herein shall be construed to limit the powers of the Supreme Court to review and reverse the finding of guilt for errors of law, prejudice, insufficient evidence, or any other reason now permitted on review of convictions and sentences to life imprisonment.

41-4715. A person sentenced for a capital felony to life without parole or for a life felony without parole shall not be eligible for parole and shall not be paroled.

Act 280 of 1975 passed by the Arkansas Legislature, effective January 1, 1976, codified in Ark. Stat. Ann. §§41-1301 et seq. (1977), and amending the prior Arkansas death penalty statute, §§41-4701 et seq. (Supp. 1973), provides in relevant part as follows:

41-1304. Mitigating circumstances shall include but are not limited to the following:

(1) the capital murder was committed while the defendant was under extreme mental or emotional disturbance;

(2) the capital murder was committed while the defendant was acting under unusual pressures or influences or under the domination of another person;

(3) the capital murder was committed while the capacity of the defendant to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of law was impaired as a result of mental disease or defect, fntoxication, or drug abuse;

(4) the youth of the defendant at the time of the commission of the capital murder;

(5) the capital murder was committed by another person and the defendant was an accomplice and his participation relatively minor;

(6) the defendant has no sigificant history of prior criminal activity.

MISCELLANEOUS

Ark. Rule Crim. Proc. 37 provides, in relevant part:

Rule 37.1 Scope of Remedy. A prisoner, in custody under sentence of a circuit court . . . claiming a right to be released, or to have a new trial, or to have the original sentence modified on the ground; (a) that the sentence was imposed in violation of the Constitution and laws of the United States or this state; or

* * * *

(d) that the sentence is otherwise subject to collateral attack; may file a verified motion at any time in the court which imposed the sentence, praying that the sentence be vacated or corrected.

Rule 37.2 Commencment of Proceedings; Pleadings; Permission of Supreme Court Following Appeal.

(a) If the conviction in the original case was appealed to the Supreme Court, then no proceedings under this rule shall be entertained by the circuit court without prior permission of the Supreme Court.

(b) All grounds for relief available to a prisioner under this rule must be raised in his original or amended petition. Any grounds not so raised or any grounds finally adjudicated or intelligently and under-standingly waived in the proceedings which resulted in the conviction or sentence or in any other proceedings that the prisoner may have taken to secure relief from his conviction or sentence may not be the basis for a subsequent petition.

STATEMENT OF THE CASE

On October 14, 1975, the Petitioner, a 22-year old diabetic with no significant history of prior criminal activity, was charged in the Circuit Court of Poinsett County, Arkansas, with capital felony murder in violation of Ark. Stat. Ann. §41-4702 (Supp. 1973). On March 11, 1976 -- after a three and one-half day trial on the conviction issue and a one-half day hearing on the punishment phase, during which Petitioner was represented by court-appointed counsel -- he was sentenced to death by electrocution.[1/] The Arkansas Supreme Court affirmed the judgment and sentence on June 27, 1977. Woodard v. State, 261 Ark. 895, 553 S.W.2d 259 (1977). This Court denied Petitioner's untimely petition for a writ of certiorari from his direct appeal on January 15, 1979.[2/]

On May 4, 1981, Petitioner requested that the Arkansas Supreme Court permit him to proceed under the State's collateral review procedure, Ark. Rule Crim. Proc. 37, and stay his execution. That request was denied on June 29, 1981. The Governor of Arkansas set Petitioner's execution date for August 6, 1981. On July 27, 1981, this Court granted a stay of execution pending disposition of this petition, and on August 14, 1981, Mr. Justice Blackmun granted Petitioner an extension of time in which to file this petition to and including September 26, 1981.

1/ The trial began on May 1, 1976. On Thursday, May 4, the judge recessed the trial because a juror was ill. Tr. at 676-677. The court was convened briefly on Monday, March 8, at which time the jury was admonished not to discuss the case. Tr. at 680-681. The trial did not continue until Thursday, March 11, when the closing arguments were presented. Tr. at 682.

2/ Because of Petitioner's difficulty in securing new counsel following resignation of his court-appointed counsel, the earlier petition was filed out of time. It raised issues different from those raised herein.

A. The Events Leading Up to the Trial.

The body of Mr. C.M. Baker was discovered on the night of September 6, 1975 by hunters in dense undergrowth in a remote wooded area adjacent to a bean field in Poinsett County, Arkansas. Tr. at 256.[3/] The coroner's report determined that he had been killed by three or more shotgun blasts. Tr. at 231-232. The police immediately began their investigation.

Based on the fact that Petitioner had been seen with Mr. Baker on September 3, 1975 police picked Petitioner up at his home on the morning of September 7th, and drove him in a police car to the Sheriff's office for questioning. Tr. at 84-85. Petitioner was questioned from approximately 10:00 a.m. until approximately 4:30 p.m. that afternoon. Although police were aware that Petitioner was a diabetic, they did not allow him to obtain insulin for his daily shot or offer him any food. Id. at 86. During the all-day interrogation, Petitioner gave the police a statement admitting that he had seen the victim the morning of September 3rd, but denying any knowledge of the crime. When Petitioner returned home, accompanied by police officers, he permitted the police to search his trailer and truck and gave them his shotgun and several other items. Tr. at 115-117. The police had no direct evidence linking Petitioner to the crime. Id. at 89; 324-325.

The following day, Petitioner was hospitalized for his diabetic condition. Tr. at 118. He remained there for approximately two weeks. Id. Upon his release he was again

3/ Selected portions of the trial transcript are reproduced in App. C.

stopped by police and, on at least one occasion, taken to the Sheriff's office for additional questioning.[4/]

On the morning of October 10, 1975, Petitioner was once again stopped by the flashing blue lights of a police car as he was driving his wife to work. Tr. at 122, 511. He was instructed by the officer to drive to the Sheriff's office for questioning regarding the alleged theft of trophies from a fair ground. Tr. at 123, 511, 669. The police car followed Petitioner's pick-up truck as he dropped his wife at work and drove to the Sheriff's office. Tr. at 123, 511, 669.

Once at the Sheriff's office, however, Petitioner was never questioned about the allegedly stolen trophies. Instead, the questioning focused on the death of Mr. Baker. Tr. at 514. Sheriff Johnson telephoned state police investigator Fred Odom at his home in a nearby city and asked him to come to the Sheriff's office "and talk with the suspect who was then a suspect in the theft of some dog trophies. . . ." Tr. at 335-336.[5/] When Officer Odom arrived, about 11:15 a.m., Petitioner was with Sheriff Johnson in the Sheriff's office. Officer Odom was granted permission to question

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4/ The record is unclear regarding the precise number of times Petitioner was taken in for questioning. One officer testified that he took Petitioner to the Sheriff's office on three occasions. Tr. at 84. The same officer testified that he stopped Petitioner twice as Petitioner was taking his wife to work. Tr. at 89. Petitioner testified that the police either pulled him over while he was taking his wife to work or came to his home approximately seven times. Tr. at 119-120.

5/ The record is conflicting with regard to whether Petitioner was informed that he had been arrested and charged with the theft of the dog trophies. See Tr. at 164, 376-377. The Arkansas courts apparently interpreted the testimony of the officers that Petitioner was not arrested until after his confession to mean that he had not been arrested on either charge.

Petitioner. Tr. at 327-328. Although Officer Odom ostensibly had been called to interview Petitioner about the stolen trophies, he testified that he never interrogated Petitioner about the trophies. His questioning focused on the unsolved murder. Tr. at 337. According to police testimony, Petitioner was, by this time, considered the "suspect" in the murder case, tr. at 328, 333-334, although they still had no direct evidence linking him to the crime. Affidavit of Chief Criminal Investigator Doyle Hillis, App. D.

This time Petitioner was not released after he was questioned. Instead, after reading Petitioner his rights, Officer Odom and Deputy Sheriff Findley took him to the "I.D." section of the Sheriff's department, located in the basement of the jail, for fingerprinting and mug shots. As Officer Odom explained:

> "A. [T]his is also a procedure which is common to our department, that is, photograph and fingerprint anyone who has reached the accusatory stage in an investigation.
>
> Q. Of course, he had reached the accusatory stage at that time, hadn't he?
>
> A. Yes, sir. Due to previous -- due to the previous five weeks' investigation before.
>
> Q. And you told him that he was a suspect, of course?
>
> A. Yes, sir."

Tr. at 334 (emphasis added).

Thereafter, Officer Odom and Deputy Sheriff Findley put Petitioner in the back seat of an unmarked police car to transport him to the remote area where the victim's body had been found. Before proceeding, they stopped at a drive-in

restaurant and had lunch in the car. Tr. at 335-338. They arrived at the scene at 1:18 p.m. Tr. at 339.

At this point, the officers still had no probable cause to justify arresting Petitioner and no direct evidence linked him to the crime. Doyle Hillis, then the chief criminal investigator for Poinsett County, Arkansas, has so stated in an affidavit. See Affidavit of Doyle Hillis, App. D. Their purpose in taking him to the scene of the crime was to obtain a confession. As Officer Fred Odom testified:

> Q. You went down there for the purpose of getting a confession, didn't you?
>
> A. We went there for the purpose of obtaining an interview; it if [sic] evolved into a confession, yes, sir.
>
> Q. But you hoped to get a confession was the purpose of your going down there, wasn't it?
>
> A. Yes, sir, if he was the man that had committed the crime, I wanted a confession if that be how it came about, yes, sir.

Tr. at 52 (emphasis added). See also tr. at 54.

Upon arriving at the scene, Petitioner was shown a series of photographs the police had taken of the body. Tr. at 339-344. Officer Odom testified at the trial that, after about twenty minutes, Petitioner began relating the story of how he had killed the victim. Tr. at 351-352. One of the officers wrote out a ten-page statement in long hand and, at 4:28 p.m. Petitioner signed it.[6/] He was immediately arrested

6/ Petitioner testified that the officers had written out the statement based upon their own knowledge and assumptions of the facts surrounding the crime and that he had signed it only after they had beaten and threatened him. Tr. at 521-563. The jury believed the police version, which is assumed to be accurate for the purposes of this petition.

and, shortly thereafter, the officers drove Petitioner to the Poinsett County Jail and left him in the custody of Sheriff Gerald Crawford. In the twenty-four hour period immediately following, Petitioner gave the police another written and a recorded oral statement. Tr. at 173-181.

The following day, police officers returned with Petitioner to the area where the body had been found. A television reporter, who said he had learned of Petitioner's arrest the night before from a "confidential source", followed them and was permitted to interview Petitioner while he was in police custody. The reporter was later called as a rebuttal witness over defense counsel's objection, and he testified to statements made by Petitioner at the scene. Tr. at 650-656.

B. The Trial and the Direct Appeal.

At the trial, the prosecution relied primarily upon Petitioner's written and recorded statements -- obtained by the police officers -- that he killed C.M. Baker and robbed him of $160.00. Petitioner testified that the entire statement was made up by the two officers during the interrogation where Mr. Baker's body was found. He said he signed the statement, and gave the subsequent statements because he was afraid of what the police would do to him while he was in their custody.7/

Rather than conducting individualized, sequestered voir dire of the venire panel, the trial court permitted the entire panel to be present during death-qualifying voir dire

7/ This statement, the subsequent statements made by Petitioner during the next twenty-four hours of his incarceration, and the corroborating testimony of the television reporter, were admitted over defense counsel's objections following a Denno hearing in chambers on counsel's motion to suppress. Tr. at 6-230.

questioning. During the course of the voir dire, the court dismissed five veniremen who expressed "conscientious scruples" to imposition of the death penalty.[8/]

Under the 1973 death statute under which Petitioner was sentenced, Ark. Stat. Ann. §§42-4701 et seq. ("the 1973 Statute"), the jury was required to consider both aggravating and mitigating circumstances in deciding whether to impose the death penalty. The prosecutor was permitted to argue, and the jury found, that two aggravating circumstances were present which justified imposition of the death penalty in this case.[9/]

First, the prosecutor argued that "the capital felony was committed for the purpose of avoiding or preventing a lawful arrest or effecting an escape from custody . . .." Ark. Stat. Ann. §41-4711(d). Although the language of the statute indicates that this aggravating circumstance is intended to apply where a capital felony is committed to escape from custody or to prevent a lawful arrest for a previous separate crime, the prosecutor argued that it would be satisfied if, after robbing his alleged victim, Petitioner killed him to eliminate him as a possible witness in a robbery case. Thus the jury was invited to conclude that the capital felony of which Petitioner was convicted (robbery and murder) was committed for the purpose of avoiding arrest for the same capital felony. The aggravating circumstance, so defined,

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8/ The voir dire will be discussed more fully in part II of this Petition, infra. The transcript of the voir dire is attached as App. E.

9/ The jury found that the two aggravating circumstances were not outweighed by the presence of mitigating circumstances, although at least five members of the jury apparently found some mitigating circumstances. See infra. at 16-17, 46-47.

would apply to every capital felony, since the prosecutor could always argue that a killing in the course of a felony has the effect of eliminating an important witness.

Second, the prosecutor argued that the jury should find a second aggravating circumstance because Petitioner had committed the felony for pecuniary gain. Ark. Stat. Ann. §41-4711(e). The notion of pecuniary gain was, of course, an aspect of the underlying robbery-murder felony of which Petitioner was convicted. Ark. Stat. Ann. §41-4702(a). Nevertheless, the jury was invited to apply this aggravating circumstance present in the underlying offense.

The jury was then given a checklist regarding aggravating and mitigating circumstances. Under this procedure, the jury was instructed to determine first whether any of certain aggravating circumstances existed and, second, whether any mitigating circumstances existed. The jury was instructed then to determine whether the aggravating circumstances outweighed the mitigating circumstances, or vice versa.

As the Arkansas Supreme Court noted on the direct appeal, Woodard v. State, 261 Ark. 895, 553 S.W.2d 259 (1977), the jury returned to the courtroom in the midst of its deliberations on the penalty issue and asked the court for direction because it was numerically divided 7 to 5 on the ultimate life-death question, stating, "Your Honor, the way we have answered forms A and B, section one, we have come down to section two where according to the law we have only one place to mark, and we can't agree upon that now." Id. at 265. The Court instructed them to return to the jury room and, in effect, to do the logical thing. Tr. at 772. They

mechanically followed the form and checked the spot on the form which stated, "the mitigating circumstances are not sufficient to outweigh the aggravating circumstances." 553 S.W.2d.

Petitioner appealed his conviction and sentence to the Arkansas Supreme Court on June 27, 1977, as reported in Woodard v. State, supra, 261 Ark. 895, 553 S.W. 2d 259 (1977). His conviction was affirmed.

Thereafter, Petitioner's court-appointed counsel resigned, and Petitioner sought a replacement. Because of the time and difficulty encountered in finding substitute counsel, the petition for certiorari to this Court from the direct appeal was filed out of time. That petition, which raised issues distinct from those in this petition, was denied. 439 U.S. 1122 (1979).10/

C. State Collateral Review

This petition arises out of Petitioner's attempt to take advantage of the Arkansas collateral review procedure, Ark. Crim. Proc. Rule 37 (Repl. 1977). That Rule provides that if the conviction in the original case was appealed to the Arkansas Supreme Court, then prior permission is required from the court to proceed under the Rule. In a lengthy Rule 37 petition, Petitioner contended that the judgment and sentence of the Poinsett County, Circuit Court were void

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10/ The earlier petition challenged (1) the Arkansas "checklist" procedure for imposing the death sentence and its constraint of jury consideration of mitigating circumstances; (2) the application in Petitioner's case of statutory aggravating circumstances; and (3) the constitutionality of the 1973 Arkansas death statute without the counterbalancing safeguard of appellate comparative sentence review.

because they were imposed in fundamental violation of the Constitution and laws of the State of Arkansas and of the United States.[11/] In a four and one-half page opinion, attached as App. A, the Arkansas Supreme Court denied Petitioner's request to proceed under Rule 37. For the reasons set forth below, the opinion of the Arkansas Supreme Court either misinterpreted or failed to apply several of the decisions of this Court and failed to protect Petitioner's rights under the Fourth, Fifth, Sixth, and Fourteenth Amendments to the United States Constitution.

Petitioner is currently in custody in the Cummins Unit Penitentiary, Grady, Arkansas. His execution, which had been scheduled for August 6, 1981, was stayed by this Court pending disposition of this petition.

11/ Petitioner's Rule 37 Petition challenged the conviction and sentence on a number of grounds in addition to those raised herein. Among those grounds was a challenge of the constitutionality of a number of facets of the sentencing procedures used in Petitioner's case, including the application of the "avoiding arrest" and "pecuniary gain" aggravating circumstances to the offense of robbery murder of which Petitioner was convicted. In addition, Petitioner alleged that the mechanical checklist procedure artificially constrained the jury and prevented them from considering all possible mitigating circumstances, and thus ran afoul of this Court's decision in Lockett v. Ohio, 438 U.S. 586 (1978). Finally, Petitioner contended that his court-appointed counsel had been ineffective at both the guilt-innocence and penalty phases of the trial. The attorney who had been appointed to represent Petitioner at the trial admitted that he had no experience with capital cases, was unfamiliar with the State's death statute, and had not realized the types of evidence he could put on at the penalty phase. See Affidavit of Burk Dabney, App. F.

REASONS FOR GRANTING THE WRIT

I

THE ARKANSAS SUPREME COURT ERRONEOUSLY INTERPRETED DUNAWAY V. NEW YORK, AND IMPROPERLY PERMITTED THE TRIAL COURT'S USE OF PETITIONER'S CONFESSIONS, WHICH WERE THE "FRUIT" OF AN ILLEGAL INVESTIGATORY SEIZURE WITHOUT PROBABLE CAUSE IN VIOLATION OF THE FOURTH AND FOURTEENTH AMENDMENTS

A. The Decision of the Arkansas Supreme Court is Directly in Conflict With the Holding and Principles of Dunaway.

The Arkansas Supreme Court misinterpreted the Fourth and Fourteenth Amendments' protection, as set forth in Dunaway v. New York, 442 U.S. 200 (1979), against the admission at trial of confessions obtained from a criminal defendant seized without probable cause. The court correctly stated that Dunaway holds that "there must be probable cause to hold a suspect before a statement made by him may be used against him at the trial." App. A at 1-2. In the very next sentence, however, the court stated that it had "specifically ruled upon the voluntariness of the confessions in the direct appeal." Id. at 2 (emphasis added). The Arkansas court's opinion thus confused the issue of the "voluntariness" of the confession given after Miranda warnings under the Fifth Amendment with the issue of its admissibility under the Fourth Amendment following an illegal seizure. Although the factual situation of Dunaway is strikingly similar to the present situation, the Arkansas Supreme Court nevertheless mistakenly

held that Dunaway did not apply under the circumstances because the confession was "voluntarily" given after the Miranda warnings.

The Arkansas court further concluded, based upon police testimony, that Petitioner's Fourth Amendment rights were not violated because he "was not being held in custody until after he made statements which gave rise to probable cause." Id. at 2. The court concluded that to construe Dunaway to exclude the statements elicited from Petitioner during police interrogation prior to his official arrest "would prevent the police from questioning any suspect unless they had probable cause for his arrest." Id. at 2. But Petitioner's argument precisely parallels the rationale, holding, and facts of Dunaway. It did not in any way suggest that police officers are prohibited from the reasonable questioning of suspects within the confines of the Fourth Amendment and the narrow exceptions to the probable cause requirement. The Arkansas Supreme Court's language indicates its belief that, despite Dunaway, police have broad powers to detain and interrogate suspects for lengthy periods of time short of actually arresting them. In so concluding, it failed to follow this Court's instructions in Dunaway and subsequent cases that investigatory detentions for custodial interrogations are not permitted under the Fourth Amendment without a warrant and that all of the facts must be examined to determine whether, in a particular case, an encounter with police is sufficiently intrusive to constitute a seizure under the Fourth Amendment. 442 U.S. at 214-216, Michigan v. Summers,

___ U.S. ___, 101 S.Ct. 2587, 2591-2593 (1981); United States v. Mendenhall, 446 U.S. 544, 554 (1980).[12/]

In this case, the uncontested facts show that Petitioner had been stopped by a police car, interrogated by police for an entire morning at the police station, taken to the jail to be fingerprinted and photographed, driven in a police car in the company of two police officers to the remote location where the body had been found, and then again interrogated all afternoon until he signed a confession written out by one of the officers. Under these undisputed facts, where Petitioner was interrogated at length under circumstances in which he could not terminate the questioning and leave, the conclusion of the Arkansas Supreme Court that Petitioner was not "in custody" until after his arrest simply ignores the holding of Dunaway that the application of the Fourth Amendment does not depend upon whether a seizure is characterized as an "arrest" under state law.

B. Petitioner was "Seized" by the Arkansas Police Without Probable Cause in Violation of the Fourth and Fourteenth Amendments.

1. An "Investigatory Detention" is a "Seizure" Within the Meaning of the Fourth Amendment.

The Fourth Amendment, applicable to the states through the Fourteenth Amendment, mandates that all seizures

12/ Dunaway was decided after Petitioner's direct appeal. The Arkansas Supreme Court nevertheless indicated that Petitioner's Fourth Amendment argument might be untimely because, in its view, Dunaway merely reiterated the earlier holding of Brown v. Illinois, 422 U.S. 590 (1975), "that a Miranda warning is no cure for a voluntary statement given in violation of the Fourth Amendment." App. A at 1. Thus the court reasoned, "this argument would have been as valid on the original appeal as it is at this time." This Court, however, made clear in Dunaway, that it was deciding a new issue: the admissibility of a confession elicited during a custodial detention on less than probable cause.

of persons must be based upon probable cause. Mapp v. Ohio, 367 U.S. 643 (1961). Whether a Fourth Amendment "seizure" has occurred depends not upon whether it is called an arrest, a custodial interrogation, or an investigative detention, but, among other things, upon the degree of intrusiveness of the encounter between the police and the individual, Terry v. Ohio, 392 U.S. 1, 16-19 (1968), and its voluntariness, Dunaway v. New York, 442 U.S. at 207 and n.6. This Court has consistently held, in all but a very narrow range of circumstances,[13/] that police interrogations of individuals are sufficiently intrusive to require probable cause. Statements elicited through exploitation of an illegal seizure must be excluded from evidence. Dunaway, supra.

In Dunaway, a police detective had received information from a jail inmate implicating the petitioner, but this information fell short of the probable cause necessary to obtain a warrant. Based upon this information, the detective ordered police to "pick up" the petitioner and "bring him in." The petitioner was picked up and driven to the police station. He was then placed in an interrogation room and

13/ Terry v. Ohio, 392 U.S. 1 (1968) (brief, on-the-spot stop on the street based on articulable suspicion and frisk for weapons); Adams v. Williams, 407 U.S. 143 (1972) (frisk for weapons on basis of reasonable suspicion); Pennsylvania v. Mimms, 434 U.S. 106 (1977) (order to get out of car is permissible "de minimis" intrusion after car is lawfully detained for traffic violations; frisk for weapons justified after "bulge" observed in jacket); United States v. Brignoni-Ponce, 422 U.S. 873 (1975) (brief investigative stops by roving border patrol); United States v. Martinez-Fuerte, 428 U.S. 543 (1976) (fixed checkpoint to stop and check vehicles for aliens); Delaware v. Prouse, 440 U.S. 648, (1979) (random checks for drivers' licenses and proper vehicle registration not permitted on less than articulable reasonable suspicion); Michigan v. Summers, supra, ____ U.S. ____, 101 S.Ct. 2587 (1981) (warrant to search for contraband carries with it limited authority to detain occupant of premisses while proper search is conducted.

questioned by officers after receiving a Miranda warning. He was never told that he was under arrest until after he had made incriminating statements. These statements, which provided the probable cause for his arrest, were followed the next day by a second, more complete statement. Id. at 218, n.20.

This Court reversed and remanded Dunaway's conviction in light of Brown v. Illinois. The New York Court of Appeals held on remand that, although police lacked probable cause for an arrest before Dunaway made incriminating statements, law enforcement officials were permitted to detain him for questioning upon "reasonable suspicion" for a reasonable period of time under carefully controlled conditions ample to protect his Fifth and Sixth Amendment rights. The New York court further held that, even if the detention had been illegal, the nexus between the detention and the statements had been sufficiently attenuated to allow admission of the incriminating statements. 442 U.S. at 200. This Court emphatically rejected both basis for the New York Court's decision.

In reaffirming the probable cause requirement for seizures, apart from the narrow exceptions permitted under Terry v. Ohio and its progeny, supra, n. 13, this Court rejected the notion that reasonable suspicion, short of probable cause, justified Dunaway's seizure and interrogation. Dunaway, supra, at 215-216. The seizure was in all important respects indistinguishable from a traditional arrest. Dunaway had been (1) "picked up" by police; (2) "brought in" for questioning; (3) he had been interrogated; and (4) under circumstances in which he was not free to leave. Consequently,

his "seizure" must be supported by probable cause, despite the fact that he was not "arrested" until after his incriminating statement. Id. Detention for custodial interrogation, regardless of the label the state applies to it, intrudes so severely upon an individual's protected interests under the Fourth Amendment as to trigger the traditional safeguards against illegal arrests. 442 U.S. at 216; Davis v. Mississippi, 394 U.S. 721 (1969); Brown v. Illinois, supra, 442 U.S. 590 (1975). Moreover, because these safeguards serve interests and policies under the Fourth Amendment distinct from those under the Fifth Amendment, a determination that a statement is "voluntary" for purposes of the Fifth Amendment exclusionary rule is merely a "threshold requirement" in determining its admissibility under the Fourth Amendment. 442 U.S. at 217.14/

This Court also specifically rejected the arguments proffered by the state that Dunaway's trip to the police station and the ensuing interrogation had been "voluntary" until he was arrested, stating, "It must be recognized that whenever a police officer accosts an individual and restrains his freedom to walk away, he has 'seized' that person." Id. at 207, n.6, quoting Terry v. Ohio, 393 U.S. 1, 16 (1968). Thus Dunaway was restrained not by handcuffs or by bars, but by the custodial setting in which he was placed. The fact that he was not chained did not make the setting non-custodial

14/ Although the Arkansas Supreme Court correctly asserted that the basis of Dunaway can be found in Brown v. Illinois, Dunaway goes farther. As this Court stated in Dunaway, "We decide in this case the question reserved 10 years ago in Morales v. New York, 396 U.S. 102, 90 S. Ct. 291 (1969), namely, the question of the legality of custodial questioning on less than probable cause for a full-fledged arrest." 442 U.S. at 202.

any more than his lack of resistance made his presence in the interrogation room voluntary. This rule was reiterated only last Term in Michigan v. Summers, supra, ___ U.S. ___, 101 S.Ct. 2587, 2590 n.5. Indeed, even a "request" by a police officer to come to the police station "may easily carry an implication of obligation, while the appearance itself, unless clearly stated to be voluntary, may be an awesome experience for the ordinary citizen." Dunaway at 207, n.6, quoting A.L.I. Model Code of Pre-arrangement Procedure §2.01(3) and commentary, at 91 (Tenative Draft No. 1 (1966). Under the Fourth Amendment, "voluntariness" must be "determined from the totality of all circumstances." Schneckloth v. Bustamonte, 412 U.S. 218, 227 (1973) (whether consent to search is voluntary or "the product of duress or coercion, express or implied" must be ascertained from the facts.) The notion of consent, related to the intrusiveness of the encounter, clearly implies the ability to withdraw that consent and terminate an interrogation. A Fourth Amendment "seizure" has occurred when, "in view of all the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave." United States v. Mendenhall, supra, 446 U.S. at 554. Thus, if a person is interrogated by police in a situation in which he is "free to disregard the questions and walk away," no seizure has occurred. 442 U.S. at 554. But if that person's freedom of movement is restricted, outside of the narrow exceptions of Terry and its progeny, he has been seized, and his seizure must be based upon probable cause. Terry v. Ohio, supra 393 U.S. 1.

2. The Custodial Detention, Transport, and Interrogation of Petitioner in This Case was a Fourth Amendment Seizure Sufficiently Intrustive to Require Probable Cause.

The facts of the present case are not significantly distinguishable from those in Dunaway. They explicitly demonstrate that Petitioner was illegally "seized" within the meaning of the Fourth Amendment. Like Dunaway, he was (1) "picked up", (2) "brought in" for questioning, (3) interrogated by police, and (4) questioned under circumstances in which he was not free to disregard the questioning and leave. Indeed, the intrusiveness of Petitioner's multiple encounters with the police in this case far exceeded that of the petitioner in Dunaway.

Petitioner was first stopped by police on the morning of September 7, 1975, several days after the crime. He was taken to the police station, where he was interrogated by police for approximately six hours. Although the police were aware that Petitioner was a diabetic, he was questioned all day without food and was not permitted to obtain the insulin he required daily. Although Petitioner was released after this initial interrogation, he was not "free to go" -- he was not even free to eat or obtain necessary medicine -- until the police released him.[15/]

15/ The court referred to the "confession of September 7th" in responding to Petitioner's Dunaway argument. App. at 2. In fact, however, no confession was rendered on September 7, and the state has never contended that the September 7 statement was in any sense incriminating. For this reason, the state informed the trial court that it would not introduce this statement into evidence. Tr. at 43-44.

Shortly thereafter, Petitioner was hospitalized for his condition for a period of about two weeks. Following his release, he was again "picked up" and "taken in" for questioning. Tr. at 119-121. On at least one occasion, he was pulled over by the flashing lights of a police car and taken to the police station.[16/]

The crucial encounter with the police took place on the morning of October 10.[17/] Petitioner was driving his wife to work about seven o'clock in the morning when he was stopped by the flashing blue lights of a police car and instructed by the police to drive to the Sheriff's office. He was informed that he was to be questioned about allegedly stolen trophies. The police followed Petitioner's pickup truck as he drove his wife to work and proceeded to the Sheriff's office.[18/]

16/ The trial testimony is conflicting with regard to the precise number of times Petitioner was "picked up" and "brought in" for questioning. For the purposes of this petition, any factual disputes are resolved in favor of the state, based upon the testimony of police officers at the trial.

17/ The significant facts of this encounter are not in dispute -- only the Arkansas court's conclusion as to their legal significance.

18/ The Arkansas Supreme Court did not regard it as significant that Petitioner was permitted to drive his own truck, closely followed by the police car, rather than being placed in the police car. In describing the incident, the court's opinion on the direct appeal stated simply as follows:

> "More than a month later [after the September 7 interrogation] the crime had not been solved, and on October 10, 1975, appellant again was picked up by the Craighead County sheriff's department and taken to the sheriff's office in Jonesboro, where he was fingerprinted and photographed. Craighead County Deputy Sheriff Findley and State Police Investigator Odom drove appellant to the scene where the body was found, and, after being questioned and shown photographs of the deceased, appellant gave a statement to the police officers. . . . [A]fter placing appellant under arrest and charging him with capital felony murder, [the officers] delivered him to the Poinsett County Jail." 553 S.W. 2d at 261.

Once there, Petitioner was questioned about the murder, not about the allegedly stolen trophies.[19] Tr. at 337. Questioning continued all morning. Petitioner knew from his previous experiences that he was not free to leave until the police dismissed him. This time, however, Petitioner was not to be released. Instead, he was taken to the jail, where he was fingerprinted and photographed. According to the uncontroverted testimony of Officer Odom, who took Petitioner to the jail, Petitioner was by this time at the "accusatory stage" of the murder investigation and was so informed by Officer Odom. Tr. at 334. Thus, instead of releasing Petitioner, Officer Odom and Deputy Sheriff Findley placed him in the back seat of a police car and transported him to the remote area where the victim's body had been discovered. As the officers later testified, they took Petitioner to this spot in the hope of eliciting a confession from him. Tr. at 52-54, 95, 205, 674-675. Indeed, one of the officers admitted that they would have kept Petitioner there "all night" if necessary to elicit his confession. Tr. at 131-132, 208. After several hours of interrogation, Petitioner signed a confession written out by one of the officers.

Petitioner was within the physical custody of the two police officers who had transported him to the remote location. Even if Petitioner's repeated trips to the police station could have been "voluntary" in any meaningful sense of the word, once he was placed in the police car and transported to the scene of the crime, he was clearly not "free

19/ Officer Odom testified that when he arrived to question Petitioner, he was already being held as the suspect in the alleged theft of trophies from a fairground the previous day. Tr. at 335-336.

to disregard the officers' questions and walk away." U.S. v. Mendenhall, supra 446 U.S. at 554. Indeed, once the journey to the remote scene of the crime commenced, he was without the opportunity or the means to go anywhere. Nevertheless, the Arkansas Supreme Court concluded, apparently based on the conclusionary testimony of the officers, that Petitioner had "voluntarily" accompanied them to the scene, that Petitioner was not "held in custody" until he was formally arrested after signing a statement admitting the killing. It did not examine the facts to determine, as required by Dunaway, Mendenhall, and Summers, whether Petitioner had voluntarily complied with the entire process, and had consented to be interrogated, fingerprinted, photographed, transported to the scene of the crime, and interrogated again until he confessed. In short, the court's facile conclusion simply ignored the dictate of this Court that all the surrounding facts must be examined to determine whether Petitioner has been "seized." A reviewing court cannot shirk this responsibility by relying simply upon the police officers' characterization of a defendant's custodial status, or inferring voluntariness from lack of resistance. Bumper v. North Carolina, 391 U.S. 543, 548-549 (1968). This Court has firmly established the principal that the government has the burden of showing that consent to an intrusion under the Fourth Amendment is "in fact, freely and voluntarily given . . ." and that this burden "cannot be discharged by showing no more than acquiescence to a claim of lawful authority." Id.; see Johnson v. United States, 333 U.S. 10 (1948); Amos v. United States, 255 U.S. 313 (1921).

Examination of the undisputed facts in this case leads inexorably to the conclusion that no reasonable person in Petitioner's position -- under interrogation at a remote location by two police officers who had transported him there admittedly to extract his confession after informing him that he was at the "accusatory stage" -- would have thought he was "free to disregard the questions and walk away."[20/] The intrusiveness of Petitioner's prolonged pre-arrest detention, beginning early in the morning with the stolen trophy ruse and ending that evening with the interrogation in the woods, offended Petitioner's Fourth Amendment security interests and required probable cause. This is especially clear in light of the prior repeated harassing custodial interrogations of Petitioner in this case. The fact that Petitioner was not formally "held in custody" or "arrested" under the state court's definition of that status until after his confession is irrelevant. As this Court stated in Dunaway,

> "Nothing is more clear than that the Fourth Amendment was meant to prevent wholesale intrusions upon the personal security of our citizenry, whether these intrusions be termed 'arrests' or 'investigatory detentions.'" 442 U.S. at 214-215 quoting Davis v. Mississippi, 394 U.S. 721, 726-727.

3. No Probable Cause Existed to Justify Petitioner's Seizure.

This Court has held repeatedly that detentions for investigative purposes, like that in the instant case, must

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20/ Obviously, the police encounter in the present case cannot be characterized as mere "questioning" of a suspect, nor as a "Terry" stop and frisk, Terry v. Ohio, supra, since the degree of intrusion, the length of the detention, and Petitioner's loss of autonomy all demonstrated an "arrest" type seizure. Dunaway v. New York, 442 U.S. at 214-216.

be supported by probable cause. See, e.g., Davis v. Mississippi, 394 U.S. 721 (1969) (investigative detention for fingerprinting and interrogation requires probable cause); Brown v. Illinois, 422 U.S. 590 (1975) (Miranda warning does not "cure" confession elicited upon illegal arrest for investigative purposes). The Court has repeatedly rejected "exceptions" to the warrant requirement that would swallow the general rule. Thus the Court in Dunaway rejected the argument by the State of New York that reasonable suspicion could provide the basis for a pre-arrest custodial interrogation, stating:

> "The central importance of the probable cause requirement to the protection of a citizen's privacy afforded by the Fourth Amendment's guarantees cannot be compromised in this fashion. 'The requirement of probable cause has roots that are deep in our history.' Henry v. United States, 361 U.S. 98,100 (1959). Hostility to seizures based on mere suspicion was a prime motivation for the adoption of the Fourth Amendment, and decisions immediately after its adoption affirmed that 'common rumor or report, suspicion, or even "strong reason to suspect" was not adequate to support a warrant for arrest.' Id. at 101 (footnotes omitted). The familiar threshold standard of probable cause for Fourth Amendment seizures reflects the benefit of extensive experience accommodating the factors relevant to the 'reasonableness' requirement of the Fourth Amendment, and provides the relative simplicity and clarity necessary to the implementation of a workable rule." 442 U.S. at 213 (citation omitted). Accord Michigan v. Summers, supra, ____ U.S. _____, 101 S.Ct. 2587, 2591 (1981).

The Arkansas police admit that they had no probable cause, and therefore no legal justification, to take Petitioner into custody for interrogation prior to the time when he signed the confession at the scene of the crime. Indeed, since the trial, the state's chief investigator of the homicide

has stated under oath that only mere suspicion existed prior to the confession, which alone provided the probable cause for Petitioner's arrest. Affidavit of Doyle Hillis, App. D. No physical evidence or eyewitness testimony linked Petitioner to the crime. Tr. at 89, 324-325. It is reasonable to conclude that it was probably precisely because the police lacked probable cause to arrest Petitioner that the officers who transported him to the scene of the crime were so intent upon obtaining his confession. In short, this case presents precisely the situation presented in Dunaway, in which "[T]he detectives embarked upon this expedition for evidence [the investigative seizure] in the hope that something might turn up." 442 U.S. at 216, quoting Brown v. Illinois, 422 U.S. 590 at 605. The policies of the Fourth Amendment will be vindicated only by excluding evidence obtained through such unconstitutional intrusive means.

C. Petitioner's Confessions Were Obtained Through Exploitation of an Illegal Seizure, and Were Therefore Impermissibly Admitted at Trial.

Evidence derived by exploitation of the illegality of official action may not be used against a criminal defendant, unless the causal connection between the illegal action and the resultant evidence is sufficiently attenuated to remove the taint of the unconstitutional conduct. Wong Sun v. United States, 371 U.S. 471, 488 (1963); Brown v. Illinois, 422 U.S. at 598-599. Where the illegally obtained evidence is a confession, the mere reading of Miranda warnings, or the determination that the confession was "voluntary," is insufficient to break the causal chain for Fourth Amendment purposes, even

though the "voluntariness" determination may meet the threshold requirement of satisfying Fifth Amendment concerns. Brown v. Illinois, 442 U.S. at 602-603. The Fourth Amendment interests and policies against unlawful seizures are vindicated only by a determination that, based on an examination of all of the facts and circumstances, the confession is sufficiently removed from the unconstitutional activity to permit its use at trial. Dunaway v. New York, 442 U.S. at 218-219.

Several factors identified in Brown v. Illinois aid this determination: "the temporal proximity of the arrest and the confession, the presence of intervening circumstances, . . . and, particularly, the purpose and flagrancy of the official misconduct." 422 U.S. at 603-604. The prosecution shoulders the burden of proving admissibility. Id.

In the instant case, uncontroverted evidence overwhelmingly demonstrated that the confession was tainted by the unconstitutional police action, and the prosecution failed to show otherwise. The confession was rendered at the height of the illegal conduct, and no intervening event had interrupted the causal chain. The police purposefully and admittedly effected the seizure and detention without probable cause in the hope that the custodial interrogation would yield a confession. Tr. at 52, 54, 95, 205, 674-675; Affidavit of Doyle Hillis, App. D. The policies calling forth the exclusionary rule -- of deterring such future constitutional violations and of preserving the integrity of the judicial process -- are especially compelling in this case, where the

police repeatedly demonstrated flagrant disregard for Petitioner's constitutional rights.[21/]

II

THE ARKANSAS SUPREME COURT FAILED TO APPLY THE DOCTRINE OF WITHERSPOON V. ILLINOIS AND UPHELD THE TRIAL COURT'S ERRONEOUS EXCLUSION OF DEATH-SCRUPLED VENIREMEN FROM THE JURY PANEL IN VIOLATION OF THE SIXTH AND FOURTEENTH AMENDMENTS

A. The Arkansas Supreme Court Misinterpreted the Witherspoon Rule and Permitted Exclusion of Jurors Who Merely Expressed "Conscientious Scruples" Regarding the Death Penalty.

In denying Petitioner's application to proceed under Rule 37, the Arkansas Supreme Court stated:

> From the excerpts of the voir dire transcript it appears that the court excluded jurors who stated they did not believe in the death penalty. It is fair to say that these jurors expressed conscientious scruples in opposition to the death penalty. Since this matter could have been initially argued and we do not see anything which would render the judgment void, we do not find reversible error.

App. A at 3. (Emphasis added). Although the court correctly perceived that jurors were excluded on the basis of their beliefs and scruples, it misconstrued the proper standard enunciated by this Court for excluding jurors for cause in capital cases.

21/ As in Dunaway and Brown, the two succeeding confessions made by Petitioner in the ensuing twenty-four hours of police custody were similarly tainted by the illegality of the detention and were improperly admitted at trial. 442 U.S. at 218 and n.20; 422 U.S. at 605 and n.12.

In Witherspoon v. Illinois, 391 U.S. 510, 522 (1968), this Court ruled that the death sentence cannot be carried out if the jury that imposed it "was chosen by excluding veniremen for cause simply because they voiced general objections to the death penalty or expressed conscientious or religious scruples against its infliction." Id., 522. Similarly, veniremen may not be excluded from a jury for the sole reason that they do not "believe in" or have "a fixed opinion against" capital punishment. Boulden v. Holman, 394 U.S. 478, 483-84 (1969). Rather, the Sixth and Fourteenth Amendments require that a jury be comprised of persons representative of a cross section of the community. Witherspoon v. Illinois, supra, 391 U.S. at 516. The erroneous exclusion of death-scrupled veniremen in the instant case rendered the jury non-representative of community views on sentencing; consequently, imposition of the death penalty was constitutionally invalid.

B. The Trial Court Excluded Veniremen in Violation of the Doctrine of Witherspoon by Failing Adequately to Determine Whether Those Persons who Expressed Reservations About the Death Penalty Could Nevertheless Perform Their Duties as Jurors.

In order to preserve the representational nature of the jury panel selected, this Court has established guidelines to govern the removal for cause of death-scrupled veniremen. To justify the exclusion of such prospective jurors in capital cases, it must be "unmistakably clear" that they would automatically refuse to impose the death penalty irrespective of the evidence, or that their views on capital punishment

would prevent them from impartially adjudging the defendant's guilt. Witherspoon v. Illinois, 391 U.S. at 522, n.21; Boulden v. Holman, 394 U.S. at 482; Maxwell v. Bishop, 398 U.S. 262, 265 (1970). In other words, exclusion for cause, based on the venireman's views on capital punishment, is improper unless those views "would prevent or substantially impair the performance of his duties as a juror in accordance with his instructions and his oath." Adams v. Texas, 448 U.S. 38, 45 (1980).

The trial court in Petitioner's case failed to ascertain, as required by Witherspoon, whether death-scrupled veniremen could abide by the law and obey their oaths as jurors.

1. The Trial Court's Instructions Misled the Jurors by Creating the False Impression that Imposition of the Death Penalty Would be "Necessary" Under Arkansas Law.

There are no circumstances under Arkansas law under which the death sentence is mandatory or necessary. Rather, Arkansas jurors are always given the discretion to impose either the death penalty or life imprisonment. Nevertheless, the trial court's instructions at voir dire misled the veniremen into believing that under Arkansas law imposition of the death penalty might be "necessary." Because the law was incorrectly presented during voir dire, the jurors' responses were confused and ambiguous, and the trial court failed to determine whether the prospective jurors could have followed Arkansas law. Those veniremen who expressed reservations about their ability to inflict capital punishment "if necessary" were erroneously excluded.

In analyzing jury instructions under the Witherspoon standard, this Court has emphasized that "[t]he critical question . . . is not how the phrases . . . have been construed by courts and commentators. What matters is how they might be understood -- or misunderstood -- by prospective jurors." Witherspoon v. Illinois, 391 U.S. at 516, n.9; Boulden v. Holman, 394 U.S. at 481-82. In this case, the jurors' misunderstanding of the trial court's ill-phrased questions on capital punishment elicited responses which indicated that they could comply with state law and perform their duty as jurors or, at worst, indicated confusion over the trial court's instructions as to what the law and their duty required.[22/]

Initially, the court indicated that the death penalty should be imposed in the "proper case," and could be the "proper verdict" in a given case. Tr. at 23, lines 12-15; 27, lines 1-2.[23/] The court thus implied that a sentence of life imprisonment in certain cases would be "improper." The court later inquired of the veniremen:

> Can you lay aside any personal beliefs and consider the law and, if necessary, return a verdict carrying with it the death penalty?

Tr. at 27, lines 20-22. (Emphasis added). Similarly, the court twice asked veniremen whether they could and would "if the law as instructed by the Court and the evidence justified,

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22/ All of the veniremen were present during the entire voir dire, and each heard all questions propounded by the court and the responses of the other veniremen. Thus, each venireman's individual perceptions of the correct law of the state were necessarily shaped not only by his direct questioning, but also by the message and tone conveyed by the court throughout the entire proceeding involving all the other veniremen.

23/ Citations in this section to "Tr. at ___" refer to the voir dire transcript, attached as App. E.

vote to return a verdict which carries with it the death penalty?" Tr. at 24, lines 21-24; 25, lines 2-8. (Emphasis added). These questions were easily understood -- or misunderstood -- by veniremen to mean that the verdict of death would in some instances be the "proper" and "necessary" verdict under the Arkansas law.

Prospective jurors were also given the false impression that a "guilty" verdict might necessarily require the imposition of capital punishment. Initially, the court properly explained to the veniremen that the determination of guilt or innocence and the determination of sentence were two "distinct responsibilities." Tr. at 24. But the statements and questions by the court suggested that the death sentence might necessarily accompany a verdict of guilt.

For example, the court repeatedly asked whether jurors could and would "return a verdict which carries with it the death penalty." Tr. at 24, lines 23-24; 25, lines 5-8, 17-18; 26, lines 4-6; 27, lines 3-4, 21-22; 28, lines 14-15, 24-25; 59, lines 16-17; 79, lines 4-6; 81, lines 14-15 (emphasis added). Such phrasing was confusing and very likely was misunderstood. The conviction decision by the jury is not a "verdict which carries with it the death penalty" -- the conviction and the sentence are two separate verdicts. Under the Arkansas law at the time and now, the jurors should have been told that no guilty verdict ever necessarily "carries with it" the death penalty.

The responses of individual veniremen to the court's questioning evidenced their misunderstanding of the law and of their responsibilities as jurors and, at most, mere hesitancy

to impose the death penalty. Venireman Bishop was questioned as follows:

> "If based upon the law and the evidence of this case and you were convinced and believed beyond a reasonable doubt that the defendant was guilty as charged, would you have any hesitancy or reluctance on your part to return a verdict of guilty?"

Bishop (who was excluded for cause) responded:

> "Well Sir, I would if it is a death penalty."

Tr. at 58, lines 23-25; 59, lines 1-4. (Emphasis added.)

Juror Parker, also excluded for cause, responded to a question about his beliefs and scruples regarding the death penalty by stating:

> "Yes, I couldn't bring in a murder. I couldn't send him to the chair. I could not."

Tr. at 67, lines 12-13.

Juror Young, also excluded for cause, actually indicated that he could follow the state law, although he opposed the death penalty. He responded to questioning about his ability to render a fair and impartial verdict with respect to guilt with, "Yes, Sir, but I don't believe in the death penalty. . . ." Tr. at 81, lines 2-3.

At most, jurors Bishop, Parker, and Young indicated in their testimony that they could not follow the law of Arkansas as erroneously stated by the trial court, if to do so meant necessary imposition of the death penalty. See Tr.

at 59, 67 and 81, respectively.[24/] Based upon this record, exclusion of these three jurors, and of others who were also confused and misled, was improper. None was ever questioned about, and none ever indicated, whether he could abide by and implement the law of Arkansas, which never requires imposition of the death penalty.[25/] The basis for these exclusions is not within the clear boundaries of Witherspoon, supra, 391 U.S. at 522, n.21, and Adams, supra, 448 U.S. at 45.

2. The Trial Court Failed to Conduct the Extensive Questioning Required by Witherspoon to Determine Whether the Veniremen's Views on Capital Punishment Would Prevent or Substantially Impair Their Performance of Jury Duty to an Extent Necessitating Exclusion.

This Court has defined narrow grounds justifying exclusion for cause in death cases. Exclusion on any broader basis is impermissible under Witherspoon, 391 U.S. at 522,

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24/ Juror Bishop's testimony further demonstrated the importance of the jurors' correct understanding of Arkansas law.

Q: You just could not and just would not consider the law?

Juror Bishop: I just don't believe in it that way.

. . .

The Court: You may stand down, Mr. Bishop.

Juror Bishop: I am sorry. I just don't believe in that.

Tr. 59, lines 1925.

25/ Some death-scrupled veniremen may only have been able to render a death sentence under extreme circumstances, and thus truthfully voiced their inability to follow a law which would force them to impose a verdict carrying with it the death penalty. Jurors cannot be excluded, however, merely because they indicate that they could not or would not recommend the death sentence in a particular case. Witherspoon v. Illinois, 391 U.S. at 522 n.21.

n. 21. Thus, for example, a trial court cannot assume that death-scrupled jurors will be unable to abide by their oaths or to obey the law, or to follow the court's instructions. Maxwell v. Bishop, 398 U.S. at 265. Nor can it be assumed that death-scrupled veniremen will automatically vote against capital punishment. Witherspoon v. Illinois, 391 U.S. at 516, n. 9. In Adams v. Texas, supra, 448 U.S. at 46-47, this Court recognized that a juror's views about the death penalty "might influence the manner in which he performs his role without exceeding the guided jury discretion" provided by state law.

Jurors may be properly excluded from the panel only when they make "unmistakably clear" that they cannot consider the death penalty and are "irrevocably committed" to vote against its imposition. Witherspoon v. Illinois, 391 U.S. 522, n. 21. In the event of doubt, the trial court must engage in extensive voir dire questioning to distinguish those veniremen who are "affected" by the death penalty, but who are not excludable because they are still able to perform their duties, from those who are "affected" by the death penalty to a degree preventing them from performing their duties under state law. In Petitioner's case, the trial court conducted only a very cursory examination of the veniremen's views about capital punishment. The questioning did not probe deeply enough to ascertain whether grounds actually existed to disqualify the prospective jurors or to remove ambiguity. See, Burns v. Estelle, 592 F.2d 1297 (5th Cir. 1979), aff'd en banc, 626 F.2d 396 (1980). In short, the clear showing required under the Witherspoon line of cases was never made in this case.

For example, the questioning of Juror Parker, supra, tr. 67, left unanswered whether Parker would attempt to obey his oath as a juror, and left ambiguous whether he could or would follow the laws of Arkansas. Tr. at 67. The two questions propounded by the Court, and Parker's answers thereto, did not clearly, profoundly and unmistakably establish, as required by Witherspoon, that Parker could not and would not perform his duties consistent with Arkansas laws. Very likely, Parker's answer would have demonstrated his ability to perform his duties, had he been correctly instructed in and understood the law of Arkansas,[26/] and had he been asked the appropriate questions. This is the only assumption that can be fairly drawn from the record.

Similarly, jurors Bishop, Hobbs and Young did not unequivocally state that they would "automatically" vote against the death penalty or that they could not make an impartial determination of guilt. Each expressed feelings or reservations against the death penalty; nevertheless, such beliefs alone are insufficient to justify disqualification. Boulden v. Holman, supra 394 U.S. at 483-84. The trial court could not properly assume from their brief answers to the court's cursory questioning that these veniremen possessed the unalterable convictions against consideration of the death penalty required by Witherspoon for disqualification. The trial court's failure to engage in a reasonably precise and thorough examination thus resulted in exclusion of these veniremen from the panel on a "broader basis" than Witherspoon

26/ Similarly, those jurors who based their responses on their misunderstanding of the Arkansas' death penalty statute were excluded without adequate questioning as to their ability to obey their oath and to uphold the law of Arkansas.

permits. The death sentence imposed by a jury so culled of death-scrupled persons violated Petitioner's rights under the Sixth and Fourteenth Amendments.

III

THE ARKANSAS SUPREME COURT PERMITTED THE TRIAL COURT TO ADMIT DAMAGING TESTIMONY BY A REPORTER CONCERNING ADMISSIONS DURING THE COURSE OF AN INTERVIEW CONDUCTED WHILE PETITIONER WAS IN POLICE CUSTODY IN DIRECT CONTRADICTION TO THIS COURT'S RECENT DECISION IN ESTELLE V. SMITH

In Estelle v. Smith, _____ U.S. ____, 101 S.Ct. 1866 (1981), this Court held that the Fifth Amendment's Miranda warning requirements fully pertain to the custodial interrogation of a prisoner by a non-government official who later testifies against the defendant at trial. As the Court explained:

> "That respondent was questioned by a psychiatrist designated by the trial court to conduct a neutral competency examination, rather than by a police officer, government informant, or prosecuting attorney is immaterial. When Dr. Grigson went beyond simply reporting to the court on the issue of competence and testified for the prosecution at the penalty phase on the crucial issue of respondent's future dangerousness, his role changed and became essentially like that of an agent of the State recounting unwarned statements made in a post-arrest custodial setting. During the psychiatric evaluation, respondent assuredly was faced with a phase of the adversary system and was not in the presence of [a] person[ ] acting solely in his interest." 101 S.Ct. at 1875 (emphasis added) (quotation omitted).

In Petitioner's case, a television reporter was permitted to interview Petitioner while he was in custody.

The day after his confession, Petitioner was again transported to the general area where the body had been discovered and where the police had questioned Petitioner the day before. There the police searched unsuccessfully for evidence to substantiate the facts elicited in his statements.

After the defendant had taken the stand, the prosecution called the reporter as a rebuttal witness over the defense counsel's objection. The reporter testified that after obtaining information regarding the defendant's arrest "from a confidential source," Tr. at 652, he had followed the Sheriff and the defendant from the jail to the remote area. The reporter further testified that while the officers searched a levee where Petitioner had allegedly thrown the victim's billfold and shoes and the expended shotgun shells, the reporter approached Petitioner and "tried to strike up a conversation with him. . . ." Tr. at 654. At first, the reporter testified, "he didn't seem to want to talk with me so I just let it drop." Id. Petitioner told the reporter that he had a headache. The reporter then obtained some aspirin tablets from one of the officers and gave them to Petitioner, who took several and put the rest in his pocket. Id. At this point, the reporter testified, he was able to strike up a conversation with the defendant and obtained answers to questions which corroborated the police version of the Petitioner's confession. All the while, police officers were at the scene and permitted the reporter to interview Petitioner without Miranda warnings and without counsel. Petitioner did not seek the interview. As the reporter testified at trial,

> "I won't say he volunteered it [the information]. He, of course, was at first reluctant to talk to me at all and the rest of the time he was just -- at best reluctant." Tr. at 697.

This reporter later testified at the trial and became the only non-police officer who testified regarding any alleged admissions by Petitioner. Because the central issue at trial was a "swearing contest" between Petitioner and the police, corroboration of the police testimony by an apparently objective witness was crucial evidence that may have been dispositive of the conviction or sentence.

Under Estelle v. Smith, supra, the reporter's testimony in this case should have been excluded from trial. The essential elements of the two situations are virtually identical. Petitioner was clearly in police custody at the time of the interview, having been arrested after giving his initial statement the previous day. Like the psychiatrist in Estelle, the reporter was not a police officer. Nevertheless, even if he was not a police agent when he interviewed Petitioner (as Petitioner alleged in his Rule 37 petition), when the reporter was later called to testify for the prosecution, "his role changed and became essentially like that of an agent of the State recounting unwarned statements made in a post-arrest custodial setting." 101 S.Ct. at 1875. Indeed, since Petitioner was in police custody, the permission of the police was necessary for the reporter to interview Petitioner. See, e.g., Evalt v. United States, 359 F.2d 534 (9th Cir. 1966). The police were clearly aware of the reporter's presence and access to Petitioner, but, as in Estelle, Petitioner was neither told of his right to remain silent in light of the

reporter's questions nor advised that he had a right to presence of counsel unless he waived it. This Court's ruling in Estelle v. Smith therefore requires that the reporter's testimony should have been excluded. Its admission over counsel's objection violated Petitioner's rights under the Fifth, Sixth and Fourteenth Amendments of the Constitution.

IV

THE ARKANSAS SUPREME COURT APPLIED A LOWER STANDARD OF REVIEW TO THE PENALTY PHASE OF THE TRIAL THAN IT APPLIED TO THE GUILT-INNOCENCE PHASE, IN VIOLATION OF THIS COURT'S MANDATE IN BULLINGTON V. MISSOURI

In his direct appeal, decided in June of 1977, Petitioner attacked the sufficiency of the jury's findings justifying the death sentence, as well as his conviction. Woodard v. State, 261 Ark. 895, 553 S.W. 2d 259 (1977). Specifically, Petitioner argued that the trial court had erred in including as aggravating circumstances the issues whether the murder had been (1) to avoid prosecution and (2) for pecuniary gain, since the jury had already returned the verdict of capital felony murder committed in perpetration of a robbery. 553 S.W. 2d at 265. Petitioner also argued that the trial court erred in failing to instruct the jury that it was not necessary to find mitigating circumstances in order to return a verdict of life imprisonment without parole. Id. The Arkansas Supreme Court rejected both arguments, stating that "the facts of this case support the sentence of death by electrocution," and that it found "no error in imposition of the death penalty under the facts of this case." Id. at 268.

In 1980, the Arkansas Supreme Court decided Miller v. State, 269 Ark. 341, 605 S.W. 2d 430 (1980), cert. denied, _____ U.S. ____, 101 S. Ct. 1750 (1981). In that case, the Arkansas Supreme Court expressly stated that it had adopted and had been using a lower standard in reviewing the sufficiency of jury findings of aggravating circumstances justifying a sentence of death than it would use in reviewing the evidence to sustain the conviction if the "aggravating circumstances" were elements of the crime. 605 S.W. 2d at 439. Specifically, the court stated that it did not consider the jury's finds of aggravating circumstances justifying the death penalty as "separate little verdicts" and did "not require the same degree of proof to sustain a jury finding that an aggravating or mitigating circumstance exists as we would require to sustain a conviction if that circumstance was a separate crime." Id. at 439. The decision did not purport to adopt a new standard, but merely articulated the standard of review the Arkansas Supreme Court applied in reviewing all jury findings at the penalty stage.

Petitioner argued in his Rule 37 petition that this differential standard of review at the penalty stage, employed by the Arkansas Supreme Court in Petitioner's direct appeal and articulated by that Court in Miller, ran afoul of this Court's decision in Bullington v. Missouri, ___ U.S. ___, 101 S.Ct. 1852 (1981). The Miller standard permits the Arkansas Supreme Court to uphold jury findings imposing the death penalty based merely upon "substantial evidence." The premise of this reduced standard of review for penalty phase findings, according to the court's opinion in Miller, is that

the penalty phase is not a proceeding of the same constitutional magnitude as the conviction phase. In Bullington, a similar argument was presented to this Court in the context of whether the double jeopardy clause applies to the penalty phase of a capital case. This Court held that, although most sentencing procedures do not stand on a constitutional par with the underlying conviction proceeding, the penalty phase in a capital phase is different. Where, as in Arkansas, capital sentencing proceeds by way of a separate penalty hearing, that separate hearing carries with it the constitutional hallmarks of the trial on guilt or innocence. 101 S.Ct. at 1858. Such a penalty proceeding is "itself a trial on the issue of punishment. . . ." Id.

The decision and reasoning in Bullington directly contradict the lesser standard of review for penalty findings practiced by the Arkansas Supreme Court and articulated by that court in Miller. Like the statute reviewed in Bullington, the 1973 Arkansas death statute requires findings of aggravating circumstance beyond a reasonable doubt. Thus, as in Bullington, in the penalty phase of the trial the state must carry "the burden of establishing certain facts beyond a reasonable doubt in its quest to obtain the harsher of the two alternative verdicts." Id. The principle underlying this Court's decision in Bullington compels that the penalty phase in a capital case receive the same degree of appellate scrutiny as the guilt phase.

This Court determined in Jackson v. Virginia, 443 U.S. 307 (1979), that due process requires that a reviewing court overturn a conviction if there is not sufficient

evidence in the record as to each element of the offense to permit a rational trier of fact to find guilt on that element beyond a reasonable doubt. The Jackson standard requires more than the ascertainment that there was a "modicum" of evidence to prove an element of the offense. The reviewing court must go farther and ascertain that the evidence as to each element was sufficient to meet the "beyond a reasonable doubt" standard. See Miller v. State, supra, 605 S.W. 2d at 441-442 (Fogleman C.J. dissenting).

Bullington and Jackson, read together, require that the findings of aggravating circumstances justifying imposition of a sentence of death at the penalty stage of a bifurcated capital trial be reviewed with the same rigor and according to the same "reasonable doubt" standard as the facts of the underlying conviction. The lesser standard of review applied in the direct review of Petitioner's trial, and articulated by the Arkansas Supreme Court in Miller, does not meet the requirements of due process and the Eighth Amendment.

CONCLUSION

For the reasons stated above, Petitioner respectfully requests that a writ of certiorari be issued to review the judgment and opinion of the Supreme Court of Arkansas.

Respectfully submitted,

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Dated: September 26, 1981

Appendix

81-5483

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1981

No.

BILLY WOODARD,

Petitioner,

v.

THE STATE OF ARKANSAS,

Respondent.

APPENDIX TO

PETITION FOR WRIT OF CERTIORARI

A

APPENDIX A

SUPREME COURT OF ARKANSAS

No. CR 76-50

BILLY WOODARD,

PETITIONER,

V.

STATE OF ARKANSAS,

RESPONDENT.

Opinion Delivered JUN 29 1981

PETITION FOR PERMISSION TO PROCEED UNDER CRIMINAL PROCEDURE RULE NO. 37

PETITION DENIED

JOHN I. PURTLE, Associate Justice

Petitioner is an inmate at the Cummins Unit of the Department of Correction under sentence of death from the Poinsett County Circuit Court. He was convicted and sentenced to die on March 4, 1976. The crime was capital felony murder in violation of Ark. Stat. Ann. § 41-4702 (Supp. 1973). We affirmed in Woodard v. State, 261 Ark. 895, 553 S.W.2d 259 (1977), cert. denied 439 U.S. 1122 (1979).

Petitioner's first assignment of error is the incriminating confessions allegedly made on October 10 and 11, 1975. He asserts these statements were obtained in violation of his rights under the Fourth, Fifth and Fourteenth Amendments of the United States Constitution. He relies specifically upon the case of Dunaway v. New York, 442 U.S. 200 (1979). Dunaway essentially holds that a Miranda warning is no cure for a voluntary statement given in violation of the Fourth Amendment. In other words, passing the Fifth Amendment test is the threshold for consideration of the Fourth Amendment barrier to such statements. Although petitioner relies on Dunaway, which was decided about the time certiorari was denied in petitioner's case, the Dunaway case was bottomed squarely upon the case of Brown v. Illinois, 422 U.S. 590 (1975). Therefore, this argument would have been as valid on the original appeal as it is at this time. Dunaway and Brown both hold that there must be probable cause to hold a suspect

before a statement made by him may be used against him at the trial. This court specifically ruled upon the voluntariness of the confessions in the direct appeal. We also examined the entire record for any overruled objections which might be prejudicial to petitioner and we found none.

Under the circumstances it seems that this argument is not timely. In any event, the testimony of the officers was that the petitioner voluntarily traveled to the scene of the crime with the deputy and that he was not being held in custody until after he made statements which gave rise to probable cause. We have no quarrel with petitioner's interpretation of Dunaway v. New York, supra. It just simply does not apply to the circumstances and facts of this case. Petitioner was not held until after he made the inculpatory statements.

The second argument of petitioner is that the confession of September 7 was obtained by coercive efforts on the part of the officers. This was also considered on the initial appeal; furthermore, there was nothing about the statement which was inculpatory. To construe Brown and Dunaway as strictly as petitioner contends would prevent the police from questioning any suspect unless they had probable cause for his arrest. We do not believe the United States Supreme Court intended this result. After the Supreme Court of the United States decided that Dunaway had been seized without probable cause, they proceeded to the question of whether the connection between the unconstitutional police conduct and the incriminating statements was sufficiently attenuated to permit the use of them at the trial. Brown identified several factors to be considered when determining whether the confession which was obtained by exploitation of an illegal arrest: the temporal proximity of the arrest and confession, the presence of intervening circumstances, and particularly the purpose and flagrancy of the official misconduct. Such confession may be admitted only after the state has shouldered the burden of proving the statements were not a product of the illegal seizure.

Petitioner raises the issue of the death qualified jury. He argues that juror Bonham was the brother-in-law of the sheriff and should have been excused for cause. Bonham also stated initially that he believed the testimony of a police officer deserves special credence. If the court had not followed through with this juror we would have to agree with the petitioner. However, the following question and answer places the matter within the sound discretion of the trial court:

> THE COURT: In weighing the evidence and the testimony do you feel like that you might be more readily to believe or to give more weight or credit to the testimony of a police officer because he was a police officer?
>
> JUROR BONHAM: No, sir, not necessarily, no, sir.

In addition to being a matter which is within the discretion of the trial court, this argument could have been raised on direct appeal but it was not. Therefore, we do not find it reversible error. In Beed v. State, 271 Ark. 526, 609 S.W.2d 898 (1980), the objection was made and the point was argued on direct appeal. The very fact that we did reverse the case in Beed is an indication that we consider these matters very seriously.

Petitioner further argues that the court erred in excluding death-scrupled veniremen from the jury panel in violation of the Sixth and Fourteenth Amendments as set out in Witherspoon v. Illinois, 391 U.S. 510 (1968), and its progeny. Witherspoon was one of the most widely established doctrines in criminal law at the time the petitioner was tried. Surely, an objection would have been made to the seating of a juror which the petitioner thought was not qualified to serve. Certainly such argument would have been carried forth in the initial appeal if there were any substance to the arguments now presented. From the excerpts of the voir dire transcript it appears that the court excluded jurors who stated they did not believe in the death penalty. It is fair to say that these jurors expressed conscientious scruples in opposition to the death penalty. Since this matter could have been initially argued and we do not see anything which would render the judgment void, we do not find reversible error. In

other words, it does not appear that it is possible the sentence was imposed in violation of the Constitution or laws of the United States or of this state.

Petitioner again argues that our death statute is unconstitutional as applied to the petitioner. We ruled squarely upon this in the original appeal.

It is also argued that the petitioner's Sixth Amendment confrontation rights and the due process clause were violated by the prosecutor's statements in both the guilt and penalty phase of the trial. The record does not reveal any objection to the remarks at the time. Therefore, it is too late to raise this issue at this time. If the prosecutor made remarks which were outside the record, it would have been proper to object and request that the remarks be stricken from the record. Parker v. State, 265 Ark. 315, 578 S.W.2d 206 (1979). The record does reveal that the petitioner was referred to by the prosecutor as an "unemployed mechanic and dog thief possibly." Objection was made and the court admonished the jury. The comment was withdrawn and stricken from the record.

Petitioner again argues the impropriety of allowing a nonsequestered rebuttal witness to testify. This matter was treated during the initial appeal and presumably was raised in the Petition for Certiorari to the United States Supreme Court which was denied.

The only other substantial allegation made by petitioner is ineffective assistance of counsel. It appears these allegations are merely second guesses at what should have been done. Perhaps no two lawyers would handle a matter in the same manner. For example, petitioner contends counsel failed to discover that the police had arrested petitioner on October 10 without probable cause. This is a conclusion and no facts are alleged. Since the statements made on October 10 were furnished to petitioner and counsel before trial, it should be obvious that he was under arrest at the time. However, the record does not show that the petitioner was arrested prior to the time he made the statements. It may be true that Dunaway v. New York,

supra, had not been decided at that time but certainly Brown v. Illinois, supra, and Wong Sun v. United States, 371 U.S. 471 (1963), had been decided. They both stand for the same proposition here argued by petitioner. It would be mere speculation now to decide whether the trial court would have excluded these confessions had they been challenged under the Fourth Amendment theory. It is also argued that counsel failed to object to certain questions asked by the prosecutor on cross-examination.

We have repeatedly held that the scope of cross-examination is largely within the discretion of the trial court. Alexander v. State, 257 Ark. 343, 516 S.W.2d 368 (1974).

It appears that the petitioner does not understand the purpose of Criminal Procedure Rule No. 37. It is not intended to provide a review of mere error in the conduct of the trial or to serve as a substitute for appeal. Clark v. State, 255 Ark. 13, 498 S.W.2d 657 (1973). It also seems that petitioner feels that any error is subject to collateral attack. Unless an allegation raises issues so fundamental as to render the judgment void, such issues cannot be raised by use of Rule 37. Orman v. Bishop, 245 Ark. 887, 435 S.W.2d 440 (1968); Moore v. Illinois, 408 U.S. 786 (1972). Issues not raised by appellant in his original appeal are considered waived unless they are so fundamental as to render the judgment void. Wicks v. State, 270 Ark. 781, 606 S.W.2d 366 (1980).

Petition denied.

APPENDIX B

amined and appellee has not directed us to any authorities which have so distinguished the cases. When we consider the conduct of the parties and their handling of the money involved we can only find that the clear preponderance of the admissible evidence shows that the property settlement was abrogated and that the probate court erred in finding that these sums were due and owing by the decedent to the appellee at the time of his death.

[3] We agree with appellants that the chancery court erred in holding that appellee was entitled to a Lady Elgin watch, a .38 caliber pistol, and a set of wedding rings which had belonged to W. F. Arnold's first wife. There is no evidence to support a gift to appellee without her testimony, which was clearly barred by the deadman's statute. See *Greer v. Stilwell*, 184 Ark. 1102, 44 S.W.2d 1082. Significantly, appellee does not argue the validity of these gifts on appeal. As to other items of personal property claimed by appellee as her property, the deadman's statute had no application. Her testimony that she owned certain items of household goods and appliances before either marriage and that certain other items were purchased with her own funds is not contradicted. As to other items of this nature, appellee's testimony as to the manner in which they were purchased and paid for was not barred by the deadman's statute. Neither was it contradicted. We cannot say that the holding of the chancery court was against the preponderance of the evidence as to these items.

The decree of the chancery court is affirmed, insofar as it relates to the cancellation of the antenuptial agreement and the award of personal property, except for the wristwatch, pistol and the set of wedding rings, as to which the decree is reversed. The judgment of the probate court is reversed insofar as it relates to claims of appellee against the estate of W. F. Arnold.

We agree. HARRIS, C. J., and HICKMAN and BYRD, JJ.

BYRD, Justice, concurring.

Because of the testimony of Mrs. Smith and Mr. Alexander I cannot say that the chancellor was in error in finding that Mr. Arnold fraudulently overreached appellee in procuring the antenuptial agreement. However, I take this occasion to point out that our laws on antenuptial agreements especially among persons beyond the child bearing age—need a substantial revision in view of the educational and business acumen of the present day woman.

For the reasons stated I concur in the result of the majority.

HARRIS, C. J., joins in this concurrence.

Billy WOODARD, Appellant,

v.

STATE of Arkansas, Appellee.

No. CR 76-50.

Supreme Court of Arkansas,
In Banc.

June 27, 1977.

Defendant was convicted in the Circuit Court, Poinsett County, Gerald Pearson, J., of capital felony-murder, and he appealed. The Supreme Court, Roy, J., held that: (1) evidence supported trial court's finding that statements made by defendant were voluntary and admissible; (2) trial court did not abuse discretion in permitting witness who had been in the courtroom during the proceedings wherein sequestration rule was in effect to testify as a rebuttal witness, and (3) imposition of death penalty was justified.

Affirmed.

George Rose Smith, Holt, and Hickman, JJ., concurred in result but adhered to views expressed in *Collins v. State*, 261 Ark. 195, 548 S.W.2d 106.

1. Criminal Law ⇐531(3)

Evidence, in prosecution of defendant for capital felony-murder, including police officer's testimony and defendant's detailed confession which was corroborated by other evidence, supported trial court's finding that defendant was informed of his constitutional rights, that he knowingly and intelligently waived his right against self-incrimination, and that the statement was voluntary. Ark.Stats. § 41–4702, Acts 1973, Act No. 438.

2. Criminal Law ⇐519(2)

One making a confession which is involuntary is not perpetually disabled from making a voluntary confession after the conditions of abuse have been removed; lapse of time is an important consideration.

3. Criminal Law ⇐414

Evidence, in prosecution for homicide, including deputy's testimony that defendant did not raise any questions about not understanding his rights at the time statement was made while in custody of sheriff and after initial voluntary statement, and defendant's own testimony that he was not afraid of deputy, that he trusted him and that he was not threatened or mistreated by him, supported trial court's finding that defendant's statements made to deputy were voluntary and admissible. Ark.Stats. § 41–4702, Acts 1973, Act No. 438.

4. Criminal Law ⇐665(4)

Trial court, in prosecution for capital felony-murder, did not abuse discretion in permitting a witness, who had been in the courtroom during the proceedings wherein rule excluding witnesses from courtroom was in effect, to testify as a rebuttal witness. Ark.Stats. § 41–4702, Acts 1973, Act No. 438.

5. Criminal Law ⇐665(5)

Violation by witness of rule of sequestration of witnesses, through no fault of, or complicity with, party calling him, should go to credibility rather than competency of the witness.

6. Criminal Law ⇐1208(1)

It is within legislative prerogative to determine the factors to be considered by a jury when it decides whether the crime justifies the imposition of death as a sentence or life imprisonment without parole; however, guidelines are necessary to the enactment of a valid statute.

7. Criminal Law ⇐1208(1)

Whether crime was committed for pecuniary gain is a pertinent and proper factor for jury's consideration in determining whether the death penalty should be imposed. Ark.Stats. § 41–4702, Acts 1973, Act No. 438.

8. Homicide ⇐311, 354

Trial court, in prosecution of defendant for capital felony-murder, properly instructed jury on death penalty and jury complied with required statutory procedure before finding death penalty should be imposed. Ark.Stats. §§ 41–4701 et seq., 41–4710 to 41–4712, Acts 1973, Act No. 438.

9. Homicide ⇐351

Capital felony-murder statutes are constitutional. Ark.Stats. § 41–4701 et seq.

10. Homicide ⇐354

Where offense of capital felony-murder was committed for purpose of avoiding or preventing lawful arrest or effecting an escape from custody and was committed for pecuniary gain during the course of a robbery and where one or more of mitigating circumstances did not exist, imposition of death penalty on 22-year-old defendant was justified. Ark.Stats. § 41–4702, Acts 1973, Act No. 438.

M. Burk Dabney Jr., Marked Tree, for appellant.

Bill Clinton, Atty. Gen. by Robert A. Newcomb, Asst. Atty. Gen., Little Rock, for appellee.

ROY, Justice.

Appellant Billy Woodard was charged with capital felony murder in violation of Ark.Stat.Ann. § 41–4702 (Supp.1973). The information charged that appellant on Sep-

tember 3, 1975, while robbing C. M. Baker shot the victim, causing his death. The jury returned a verdict of guilty as charged and after further deliberation determined appellant should be sentenced to death. The court entered judgment accordingly. This appeal is from that judgment and sentence.

The record reflects Baker was a resident of Craighead County, Arkansas. The last day he was seen alive was September 3, 1975. Some hunters discovered his body in the floodway area near Payneway on September 7, and notified the Poinsett County sheriff's office. An investigation revealed appellant had been at the Baker home on the last day that Baker had been seen there by his wife.

After the body was found appellant was brought to the Craighead County sheriff's office for questioning on September 7, 1975; a statement was taken from him at that time and he signed a consent for the officers to search his mobile home. A search was conducted and appellant gave the officers a 12-gauge shotgun they found there. He was then released.

More than a month later the crime had not been solved, and on October 10, 1975, appellant again was picked up by the Craighead County sheriff's department and taken to the sheriff's office in Jonesboro, where he was fingerprinted and photographed. Craighead County Deputy Sheriff Findley and State Police Investigator Odom drove appellant to the scene where the body was found, and, after being questioned and shown photographs of the deceased, appellant gave a statement to the police officers admitting he had shot and killed the deceased and had taken his billfold which contained about $160. Officers Odom and Findley, after placing appellant under arrest and charging him with capital felony murder, delivered him to the Poinsett County jail.

On the same day appellant gave another statement to the Poinsett County sheriff's office which was essentially the same statement as that given to the State Police. On October 11, appellant also made a tape recorded statement which was almost identical to the first two statements. All these statements were admitted over objections at the trial. Appellant took the stand and repudiated all three statements and denied having killed or robbed the deceased.

[1] For reversal appellant first contends the court erred in admitting appellant's confession taken by officers Odom and Findley on October 10, 1975.

Appellant testified that Findley had contacted him following discovery of Baker's body and had taken him to the sheriff's office for questioning around 10:30 a. m. on September 7. He stated he did not fully understand at that time that he either had a right to give a statement or not give a statement as he desired; that, although the sheriff's department knew he was a diabetic he was refused an insulin shot; and that he arrived at the sheriff's office about 10:30 a. m. and that he did not have anything to eat or have an insulin shot from that time until a little after 4 p. m. (It is noted appellant made no self-incriminating statement at this time.)

Appellant also testified that on the 10th day of October he was arrested at 7 a. m. and was detained in the Craighead County Sheriff's office until shortly before noon; that he was photographed and fingerprinted; that he was taken to the place where the victim's body was discovered and was shown a number of photographs of the victim; that he was also told he might have to stay at the scene all night; and that he was physically abused before he gave the statement.

The trial court, pursuant to Ark.Stat. Ann. § 43-2105 (Supp.1975), held the required *Denno* hearing to consider the circumstances surrounding the giving of appellant's confessions. *Jackson v. Denno*, 378 U.S. 368, 84 S.Ct. 1774, 12 L.Ed.2d 908 (1964). Under this statute it is the duty of the court ". . . before admitting said confession into evidence to determine by a preponderance of the evidence that the same has been made voluntarily." Appellee contends the record clearly supports the

court's finding that all these confessions were voluntary.

This Court, in *Neal v. State*, 259 Ark. 27, 531 S.W.2d 17 (1975), rehearing denied January 26, 1976, has stated that:

> • • • Whenever the voluntariness of a defendant's confession is disputed on federal constitutional grounds, we make an independent determination from a review of the entire record. *Degler v. State*, 257 Ark. 388, 517 S.W.2d 515 (1974); *Davis v. North Carolina*, 384 U.S. 737, 86 S.Ct. 1761, 16 L.Ed.2d 895 (1966); and *Harris v. State*, 244 Ark. 314, 425 S.W.2d 293 (1968). In doing so, however, we do not set aside a trial court's finding of voluntariness unless the finding is "clearly erroneous." *Degler v. State, supra.* This standard of review is in accord with that of the federal courts. *United States v. United States Gypsum Co.*, 333 U.S. 364, 68 S.Ct. 525, 92 L.Ed. 746 (1948), and *Maple Island Farm v. Bitterling*, 209 F.2d 867 (8th Cir. 1954).

At the *Denno* hearing Officer Odom, the State Police investigator who actually took appellant's confession on October 10, 1975, testified that by the use of a rights form he advised appellant of all his rights. Odom also testified that appellant then signed the waiver of rights form. Appellant had received an insulin shot about ten o'clock that morning. After fingerprinting appellant, Odom took him and Findley to a restaurant for lunch. After lunch appellant, Findley and Odom left Jonesboro and traveled to the scene of the crime. Appellant had stated he did not object. On arriving at the crime scene appellant was again advised of his rights. After more questioning from the officers Woodard made his first statement. Odom denied he told appellant they were going to question him until he confessed and that to his knowledge no one coerced appellant, promised him anything, intimidated him or beat him to obtain the confession.

Appellant's confession was very detailed, consisting of ten handwritten pages.[1] It was written by Officer Odom, but each page was signed by appellant and the statement concluded as follows: "All of this statement is true and correct to the best of my knowledge. I make this statement without threats or promises being made to me." In the margin of the last page and followed by appellant's initials is the following statement: "Before making this statement I had been informed of my constitutional rights and understood them." Odom testified further that he then read the entire statement to appellant and appellant signed each page after some corrections were made. Appellant also read the confession and made some changes in it himself according to Odom.

Deputy Findley testified that on October 10 he stopped appellant's truck and asked him if he would come to the sheriff's office, and appellant complied with the request. According to Findley, Odom read appellant his constitutional rights and appellant indicated he understood them. Findley further testified there were no threats, coercion or promises of lenient treatment made to appellant. In addition, Findley denied he or Odom told appellant it would be best for him to make a statement. According to Findley when he, Odom and appellant arrived at the crime scene Odom again advised appellant of his constitutional rights. Contrary to the claims of appellant, Findley denied he physically mistreated appellant. In response to questions by the trial court, Findley denied he or Odom told appellant "if he would sign a confession that he had the easiest out in the world and that [they] would see that he got medical help."

The trial court found appellant was informed of his constitutional rights, that he knowingly and intelligently waived his

1. At trial appellant testified the entire statement was made up by the officers and he signed it because he was afraid. It is not surprising that the jury did not attach any credibility to this testimony since appellant in all three statements gave a myriad of details which would have been unknown to anyone else, such as being invited to eat watermelon with the deceased, what was done with the body and items in the possession of the deceased, etc. Testimony from other witnesses proved the accuracy of appellant's statements.

right against self-incrimination and that the statement was made voluntarily. We find the trial court's determination of voluntariness was *not* "clearly erroneous." *Neal, supra*, and *Degler, supra*.

Appellant next urges that the statement given to Sheriff Crawford and Deputy Sheriff Walker later on October 10 and the taped statement given the next day were illegally admitted as evidence. Appellant contends the earlier October 10th statement was involuntary and that consequently the subsequent confessions were also tainted by the same influences and therefore inadmissible.

In *Payne v. State*, 231 Ark. 727, 332 S.W.2d 233 (1960), as to the admissibility of confessions we adhered to the rule announced in *Love v. State*, 22 Ark. 336 (1860), that when the original confession has been made under illegal influence, such influence will be presumed to continue and color all subsequent confessions, unless the contrary is clearly shown.

[2] However, appellant's reliance upon *Payne* and other similar citations is misplaced because, as heretofore pointed out, we do not find the first confession was procured by illegal means. Even if we assume the statement given Officers Odom and Findley was involuntary, it does not automatically follow that the subsequent confessions are as a matter of law involuntary.

In *Matthews v. State*, 261 Ark. 532, 549 S.W.2d 492 (May 2, 1977), this Court held:

> • • • Whether a confession subsequent to one obtained by unlawful pressure is voluntary depends upon whether an inference as to the continuing effect of the coercive practices may fairly be drawn from the surrounding circumstances and is determined by a conclusion as to whether the accused, at the time of the second confession, was in possession of mental freedom to confess or deny his suspected participation in a crime. The effect of earlier abuse may be so clear as to forbid any inference other than that the later confession is involuntary. *On the other hand, one making a confession which is involuntary is not perpetually disabled from making a voluntary confession after the conditions of abuse have been removed. Lapse of time is an important consideration.* (Italics supplied.)

[3] In the present case the incriminating statements given by appellant to Sheriff Crawford and Deputy Sheriff Walker were made while he was in possession of the mental freedom to confess or deny his participation in the crime. There had been a lapse of time and change of circumstances since the earlier statement had been given.

After Officers Odom and Findley had taken the confession of appellant at the crime scene they took him to Harrisburg (Poinsett County) and released him into the custody of Sheriff Gerald Crawford of Poinsett County.

Crawford testified at the *Denno* hearing that after appellant was delivered to the sheriff's office all of his rights were read to him by either Crawford or his deputy, James Walker. He further testified he did not know appellant had given the previous statement to Craighead County officials when his confession was taken by Poinsett County officers.

Sheriff Crawford testified appellant told him Officers Odom and Findley "were kind of mean to him" and that he (appellant) had rather be locked up in Sheriff Crawford's jail than in Craighead County; that appellant did not tell him specifically what Odom and Findley allegedly had done but that he saw no bruises on appellant's face or body.

Deputy Walker stated appellant did not raise any questions about not understanding his rights at the time the statement was given; that he appeared to understand his rights; that he had all of his faculties and appeared to be intelligent; that he answered the questions clearly and concisely; and that he freely and voluntarily made the statement. This second statement was almost identical with the earlier statement except it contained even more details.

The testimony of appellant himself at the *Denno* hearing constituted strong evidence that the confession appellant made to the Poinsett County officers was not made

while he was under duress and was not tainted by any previous coercive influences. He testified he was not afraid of Deputy Walker, that he trusted him and that he was not threatened or mistreated by him. He also testified Sheriff Crawford treated him kindly and he was not afraid of Crawford but wanted to get away from the Craighead County officers.

The following morning, October 11, 1975, appellant gave Deputy Walker another statement, which was recorded. Before the statement was given appellant was again advised of his rights. According to Walker, appellant had no objection to making the statement, appeared rested and comfortable and was not threatened, abused or mistreated in any way. At trial appellant objected because the taped statement had not been in Walker's custody, but Walker testified he had heard the play-back of the tape and that it had not been edited, tampered with or altered in any manner from the time it was made to him until the time of the introduction of the tape in evidence.

For the foregoing reasons we find the trial court did not err in admitting all three of the statements challenged by appellant.

[4] Since the rule excluding witnesses from the courtroom was in effect[2] during the trial, appellant urges the trial court erred in permitting a witness who had been in the courtroom during the proceedings to testify as a rebuttal witness.

At trial appellant took the stand and repudiated all three statements. Also on cross-examination when asked what he told the newspaperman who was taking pictures at the floodway area in Poinsett County appellant stated, "I didn't tell him nothing."

The trial judge, in holding Larry Fugate, the reporter, could testify in rebuttal, stated:

> It will be the ruling of the Court that the State will be permitted to call the witnesses Larry Fugate and Paul Holmes[3] in rebuttal testimony, the State not having used these witnesses in its case in chief, having presented not one but three separate and independent confessions purportedly made by the defendant. The defendant having taken the stand testified in his own behalf. I believe the State could not know or anticipate in advance or during its case in chief, the defense did call both of these witnesses in their pre-trial motion in this case and was aware of these witnesses having reported this case extensively at the time of its occurrence. So the defense could hardly be surprised by any knowledge that these witnesses might have. And they being called for the purpose of rebuttal, the necessity of that rebuttal having developed during the cross-examination of the defendant, the objection will be overruled.

[5] We find the trial judge did not abuse his discretion in allowing Fugate to testify. In *Williams v. State*, 258 Ark. 207, 523 S.W.2d 377 (1975), this Court stated:

> The rule consistently applied by this court is that a violation by a witness of the rule of sequestration of witnesses, through no fault of, or complicity with, the party calling him, should go to the credibility, rather than the competency of the witness. *Harris v. State*, 171 Ark. 658, 285 S.W. 367; *Hellems v. State*, 22 Ark. 207; *Golden v. State*, 19 Ark. 590; *Pleasant v. State*, 15 Ark. 624. The power to exclude the testimony of a witness who has violated the rule should be rarely exercised. We have been unable to find any case in which this court has sustained the action of a trial court excluding the testimony of such a witness. While the witness is subject to punishment for contempt and the adverse party is free, in argument to the jury, to raise an issue as to his credibility by reason of his conduct, the party, who is innocent of the rule's violation, should not ordinarily be deprived of his testimony. *Harris v. State, supra; Aden v. State*, 237 Ark. 789, 376 S.W.2d 277; *Mobley v. State*, 251 Ark. 448, 473 S.W.2d 176.

This Court in *Norris v. State*, 259 Ark. 735, 536 S.W.2d 298 (1976), reaffirmed the principle enunciated in *Williams, supra*.

2. Ark.Stat.Ann. § 43-2021 (Repl.1964).

3. Holmes was not called to testify.

Fugate testified appellant told "Sheriff Crawford, in my presence, that he threw a billfold, a pair of shoes, and three expended shotgun shells into the water." His testimony continued:

> • • • He said that after he threw the shotgun shells and the shoes and the billfold into the water, he went up on a little hill or clump up north of the cut and slightly west of it and sat there for a while saying something to the effect of what have I done.

Appellant next argues that the trial court erred in including as an aggravating circumstance the question as to whether the capital murder was committed for pecuniary gain after the jury had returned a verdict of guilty to capital felony murder committed in perpetration of robbery.

[6] We find it is within legislative prerogative to determine the factors to be considered by a jury when it decides whether the crime justifies the imposition of death as a sentence or life imprisonment without parole. Guidelines are necessary to enactment of a valid statute. In *Gregg v. Georgia*, 428 U.S. 153, 96 S.Ct. 2909, 49 L.Ed.2d 859 (1976), in his plurality opinion Justice Stewart stated:

> We have long recognized that "[f]or the determination of sentences, justice generally requires . . . that there be taken into account the circumstances of the offense together with the character and propensities of the offender." *Pennsylvania v. Ashe*, 302 U.S. 51, 55, 58 S.Ct. 59, 61, 82 L.Ed. 43 (1937). • • •
>
> • • • • • • • . . . [T]he concerns expressed in *Furman*[4] that the penalty of death not be imposed in an arbitrary or capricious manner can be met by a carefully drafted statute that insures that the sentencing authority is given adequate information and guidance.

[7] Certainly whether the crime was committed for pecuniary gain is a pertinent and proper factor for the jury's consideration in determining whether the death sentence should be imposed.

[8] The last point urged by appellant is that the court erred in failing to instruct the jury that it was not necessary to find mitigating circumstances in order to return a verdict of life imprisonment without parole.

Appellant's position is based on the following episode in the trial. The jury, having found appellant guilty as charged, retired again to determine the imposition of punishment issue and subsequently returned to the courtroom.

JUROR KNIGHT: We have a question.

THE COURT: What is your question, Mr. Foreman?

JUROR KNIGHT: We have answered Form A and B and we have come down to section II–C.[5]

THE COURT: Form C, number one?

JUROR KNIGHT: We are down to section II.

THE COURT: And what is your question?

JUROR KNIGHT: Your Honor, the way we have answered Forms A and B, section one, we have come down to section two where according to the law we have only one place to mark, and we can't agree upon that now.

THE COURT: Without stating—how are you divided numerically? I take it you have answered all of the questions on Form A and B and all questions on Form C, part one, which is A, B, C, and D?

JUROR KNIGHT: Right.

Continuing the discussion concerning Form C:

THE COURT: Are you down to part two, A and B?

JUROR KNIGHT: Right.

THE COURT: And you cannot agree as between A and B?

JUROR KNIGHT: Yes, sir.

THE COURT: How are you numerically divided on that question?

JUROR KNIGHT: Seven and five.

4. *Furman v. Georgia*, 408 U.S. 238, 92 S.Ct. 2726, 33 L.Ed.2d 346 (1972).

5. As an appendix we attach hereto a copy of Form C as returned by the jury.

THE COURT: Ladies and Gentlemen, it is now only twenty minutes until four. You have not been deliberating over a very long period of time. Without further instructions, I am going to require you to retire and deliberate and see if you cannot reconcile your differences by further deliberations and discussion among yourselves permitting everyone to be heard, to express their views and their opinions. Those opinions should prevail which appear most reasonable, logical, and sound.

You may now retire and deliberate, and if you are unable after a reasonable period of time, notify the bailiff.

Thereafter within a short period of time the jury returned with the unanimous verdict imposing the death sentence.

Appellant contends that the exchange between the judge and jury indicates "that the jury had the honest, though erroneous belief that since they had found aggravating circumstances existed, but found no mitigating circumstances, they had no choice but to render a verdict of death by electrocution." It is impossible now to ascertain the thinking of the jury, but we do not find the facts support this assumption made by appellant.

In order to determine if this point has merit we must review the events which transpired in light of the pertinent provisions of our statutes, Ark.Stat.Ann. §§ 41–4701 et seq. (Supp.1973).

§ 41–4710. Trial procedure—Verdict in writing. A person charged with a capital felony shall be given a jury trial and sentenced pursuant to the following procedure:

(a) After presentation of all evidence and witnesses to be offered by the State and/or the defendant as to the guilt or innocence of the defendant, instructions to the jury, and argument by counsel, the jury shall retire and consider the case.

(b) If the jury finds the defendant guilty of a capital felony, the same jury shall sit again to determine whether the defendant shall be sentenced to death or life imprisonment without parole.

(c) In the proceeding to determine sentence, evidence may be presented as to any matters relevant to sentence and shall include matters relating to any of the aggravating or mitigating circumstances enumerated in Sections 11[§ 41–4711] and 12[§ 41–4712] of this act. The State and the defendant or his counsel shall be permitted to present argument for or against the sentence of death.

(d) After hearing all the evidence as to sentence, the jury shall again retire and render a sentence based upon the following:

(i) whether beyond a reasonable doubt sufficient aggravating circumstances, as enumerated in Section 11 [§ 41–4711] of this act, exist to justify a sentence of death;

(ii) whether sufficient mitigating circumstances as enumerated in Section 12 [§ 41–4712] of this act exist to justify a sentence of life imprisonment without parole.

(e) The jury in rendering its verdict shall set forth in writing its findings as to each of the aggravating or mitigating circumstances enumerated in Sections 11 [§ 41–4711] and 12 [§ 41–4712] hereof and shall set forth in writing its conclusion:

(i) that sufficient aggravating circumstances (do or do not) exist beyond a reasonable doubt to justify a sentence of death;

(ii) that there are (or are not) sufficient mitigating circumstances to outweigh the aggravating circumstances.

(f) If the jury does not make the findings requiring the death sentence by unanimous verdict, the court shall impose sentence of life imprisonment without parole. [Acts 1973, No. 438, § 10, p. 1221].

Section 41–4711 denominates the aggravating circumstances, and § 41–4712 the mitigating circumstances to be considered by the jury.

The court in accordance with our statutes instructed the jury as follows:

* * * * * * *

The aggravating circumstances set forth on Form A, which will be given to you, are the only circumstances that you may consider as aggravating circumstances. If you find that one or more of these aggravating circumstances existed beyond a reasonable doubt at the time of the commission of capital felony murder, you shall indicate your findings by checking the appropriate circumstance or circumstances on Form A, entitled Aggravating Circumstances, which shall be furnished to you before retiring.

A mitigating circumstance is one which does not justify or excuse the offense in question but may be considered as reducing the degree of the defendant's punishment. The circumstances set forth on Form B, entitled Mitigating Circumstances, which will be given to you before you retire, are not the only circumstances which you may consider as mitigating circumstances. If you find that one or more of these mitigating circumstances existed at the time of the commission of capital felony murder, you shall likewise indicate your findings by checking the appropriate circumstance or circumstances on Form B, entitled Mitigating Circumstances.

If you find that any other mitigating circumstance or circumstances existed which are not set out in Form B, you shall indicate this finding in the appropriate space on Form B and write in such circumstance or circumstances on the back side of that form.

After making the determination required to complete Forms A and B, you shall then set forth in writing your conclusions on Form C, entitled Conclusions and Verdict, which will also be provided to you before you retire.

You may not return a verdict imposing the sentence of death unless you make written findings and conclusions first that beyond a reasonable doubt one or more of the aggravating circumstances indicated on Form A existed at the time of the commission of capital felony murder; second, that beyond a reasonable doubt no mitigating circumstance or circumstances which you may find to exist outweighs or equals in weight the aggravated circumstance or circumstances. And third, you must find that the aggravating circumstance or circumstances found to have existed are sufficient to justify beyond a reasonable doubt a sentence of death. Finally, the findings, conclusions, and verdict form must be signed by each member of the jury. A copy of these instructions will be provided for you. You will be permitted to take them to the jury room with you for your deliberations for use during your deliberations.

When the jury returned to the courtroom the foreman advised the court that the jury had already completed Part 1 of Form C. The conclusions reached under Part 1 were that:

(a) (✓) One or more aggravating circumstances existed, beyond a reasonable doubt, at the time of the commission of the capital felony murder.

(b) (✓) One or more mitigating circumstances does not exist.

(c) (✓) The mitigating circumstances are not sufficient to outweigh the aggravating circumstances.

(d) (✓) The aggravating circumstances are sufficient to justify beyond a reasonable doubt, the imposition of sentence of death.

By answering the questions under Part 1 of Form C, as the jury did, the members had already decided the aggravating circumstances warranted beyond a reasonable doubt the imposition of the death sentence. As indicated by the foregoing steps, the jury complied with the required statutory procedure before finding the death penalty should be imposed.

We also find the judge had fully complied with the requirements of the statute in initially instructing the jury, and since the jury had answered all questions on Forms A and B and Part 1 of Form C no additional

instructions were necessary for the jury to arrive at its decision as to imposition of sentence.

Pursuant to Ark.Stat.Ann. § 43-2725 (Supp.1975), we have reviewed the entire record for possible error not raised by appellant and find no reversible error.

[9] At the circuit court level appellant challenged the constitutionality of §§ 41-4701, et seq. but did not question their validity on appeal. This Court in *Collins v. State*, 261 Ark. 195, 548 S.W.2d 106 (1977), upheld the constitutionality of §§ 41-4701, et seq.; therefore, any question as to the constitutionality of the statute has been resolved against appellant.

[10] We find the facts of this case support the sentence of death by electrocution. At appellant's trial the jury found that the capital felony murder was, beyond a reasonable doubt, committed for the purpose of avoiding or preventing a lawful arrest or effecting an escape from custody and that the capital felony murder was, beyond a reasonable doubt, committed for pecuniary gain. The jury further found that one or more of the mitigating circumstances did not exist.

According to appellant's confession[6] he went to the victim's house on September 3, 1975, to work on the victim's Chevrolet pickup truck. After appellant fixed the truck the victim asked him if he knew where a house trailer might be for sale. Appellant replied in the affirmative and, riding in appellant's automobile, they started to look for it. During the ride appellant saw that Baker had a roll of bills and at that time decided he would rob him. After appellant's car ran out of gas Baker got out of the car and started walking away to rest under a shade tree while appellant put in some gas from a container he had in the car. According to appellant, as the victim walked away from him he "reached in the car and got my Revelation 12 gauge pump shotgun, I got 3 shotgun shells out of the door pocket of my car and loaded the gun. I figured he had at least a couple hundred dollars judging from the money I'd seen in his billfold earlier over near Harrisburg. I walked up to the front of my car, Mr. Baker was walking away from me, I put the shotgun to my right shoulder and shot him one time in the left back. He was about 22 yards away from me, he fell to his stomach, then he got up on his hands and knees, he was moaning, he started crawling away from me. Then I walked or ran up close to him, he was still on his hands and knees, still crawling, still moaning. I pumped the empty shell out of the gun and shot him in the back again, he fell on his stomach. He kept on making them moaning sounds, I pumped the shotgun and shot him again in the side of the head. He quit moaning then, he'd rolled over on his back before I shot him the 3rd time. I layed my gun down in the road, then I got him by the feet and was turning him around, his shoes come off as I was doing this, I dragged him by his feet down the road a little ways and then I drug him out in the woods. I left the body in the woods, about 6 foot from the side of the road."

The report of the State Medical Examiner verified appellant's confessions as to the nature of the gunshot wounds and the pictures introduced as exhibits depicted the extent of the impact of the bullets particularly the last shot which was fired at a distance of approximately one foot from the victim's head.

Appellant was 22 years of age at the time he committed the murder, and his confession shows that no other person was involved in the crime. There was no testimony from a psychiatrist or psychologist that appellant was suffering from any mental disease or defect at the time of the murder.

We find no error in imposition of the death penalty under the facts of this case.

The judgment is affirmed.

6. All three statements are in accord on all the essential elements of the crime. The last two confessions contained a few more details than the first.

GEORGE ROSE SMITH, HOLT and HICKMAN, JJ., concur in the result but adhere to the views expressed in *Collins v. State*, 261 Ark. 195, 548 S.W.2d 106 (Mar. 7, 1977).

APPENDIX

FORM "C"

CONCLUSIONS AND VERDICT

The Jury, having reached its final conclusions, will so indicate by having its foreman place a check mark (✓) in the appropriate space in the sentence in accordance with the Jury's findings. Your conclusions must be unanimous. Each member of the Jury will then sign at the bottom of this form.

I.

WE THE JURY CONCLUDE:

(a) (✓) One or more aggravating circumstances existed, beyond a reasonable doubt, at the time of the commission of the capital felony murder.

( ) One or more aggravating circumstances did not exist at the time of the commission of the capital felony murder.

(If answer here is that aggravating circumstances "did not exist," skip (b), (c) and (d) and check II A below.)

(b) ( ) One or more mitigating circumstances does exist.

(✓) One or more mitigating circumstances does not exist.

(c) ( ) The mitigating circumstances are sufficient to outweigh the aggravating circumstances.

(✓) The mitigating circumstances are not sufficient to outweigh the aggravating circumstances.

(d) ( ) The aggravating circumstances are not sufficient to justify the imposition of the sentence of death.

(✓) The aggravating circumstances are sufficient to justify, beyond a reasonable doubt, the imposition of the sentence of death.

II.

WE THE JURY, after careful deliberation, have determined that the defendant shall be sentenced to:

A. ( ) LIFE IMPRISONMENT WITHOUT PAROLE.

B. (✓) DEATH BY ELECTROCUTION.

(In order to have checked "B" above, you must have answered number I (a) above in the affirmative, number I (c) above in the negative, and number I (d) above in the affirmative.)

APPENDIX C

by the defendant.

MR. DABNEY: Thank you, Your Honor.

Q (By Mr. Dabney) But this statement here does not contain any corrections like you had in this statement that you showed us there, does it?

A No, sir. This was prepared strictly from my dictation.

Q But it was in your own handwriting, wasn't it?

A That is correct.

Q And there is a correction on the last page -- the next to the last page only?

A Yes, sir.

Q And that was merely a correction of time, wasn't it?

A Yes, sir.

Q Now, Mr. Odom, there is nothing in this statement here taken on September the 7th, that would convict Mr. Woodard in any manner, was there?

A That would convict Mr. --

MR. BURNETT: (Interposing) Your Honor, I am going to object to that question.

Q (By Mr. Dabney) That would cause you to get a warrant for Mr. Woodard's arrest?

A No, sir.

Q Would you read that statement to the Court, please, into the record?

MR. BURNETT: Your Honor, I am going to object

CLYDE STILL
OFFICIAL COURT REPORTER
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932-3612

to it being read into the record. The contents of any statement is not --

THE COURT: If the defense counsel wants to preserve for the record that statement, he may introduce it. The Court will permit it to be withdrawn and a photocopy substituted for the purposes of the record here. I'm not going to permit it to be read into the record at this time since the voluntariness -- since that particular statement is not being offered in evidence by the State. I take it, Mr. Odom, that the defendant on September the 7th, in that statement, the seven page statement, did not admit the killing?

A That is correct, sir. That is correct.

THE COURT: You may continue.

Q (By Mr. Dabney) In fact, in that statement, he denied it, did he not?

A I would have to check, sir.

Q Not specifically, but he denied but he didn't -- he denied any knowledge of the man's death?

A Yes, sir.

Q And you had no reason to doubt him at that time, did you?

A Are you speaking of my opinion, sir?

Q No, from your investigation, sir.

A Well, this -- at this time it did not consist of the

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ographs to him?

A. To show the location and the position.

Q. Did you show the man, the deceased?

A. Yes, I did.

Q. All right, enlarged? What size pictures were they?

A. Eight by eleven.

Q. Did you make them yourself?

A. I took them. They were printed by the photo lab of the Arkansas State Police in Little Rock.

Q. Really, Fred, your purpose was to get a confession out of him --

MR. BURNETT: (Interposing) Your Honor, I'm going to object to that question; it is improper.

THE COURT: The objection will be overruled. You may answer.

Q. (By Mr. Dabney) You went down there for the purpose of getting a confession, didn't you?

A. We went down there for the purpose of obtaining an interview; it if evolved into a confession, yes, sir.

Q. But you hoped to get a confession was the purpose of your going down there, wasn't it?

A. Yes, sir, if he was the man that had committed the crime, I wanted a confession if that be how it came about, yes, sir.

Q. And it had been told to you that he was the man that did

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it?

A. Well, my suspicions had been very aroused by the past investigation which came about during the time between when the body was found and the time that he was again interviewed by myself on the 10th of October, which is the period, I believe -- which I believe is a period of some five to six weeks. Several things that were mentioned by Bill Woodard in the first statement on September the 7th were proved to be false in the investigation during this five to six weeks. These discrepancies were of great concern to myself and all officers involved in the investigation; and again we felt that it was necessary.

Q. So you felt like if you would take Bill Woodard down to the scene where the body was found, he would break, didn't you?

A. Not necessarily. He was taken to the scene where it could be described and locate --

Q. (Interposing) But you didn't have the rights of Billy Woodard in mind, did you?

A. Yes, sir, his constitutional rights were read to him as per this form I just read a while ago and also given to him again orally as we arrived at the scene.

Q. When you arrived at the scene, then you got out of the car and showed him the pictures and laid them out on the

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ground where they were found?

A. No, sir, I didn't lay them out on the ground; I did let the suspect view the photographs.

Q. And so you were trying to break him down the whole time, weren't you?

A. Sir, I don't have an answer to that. I did interview him. I was trying to find out who had been involved in the crime, yes, sir. That is the purpose of my investigation; I don't want to bluntly answer that yes or no and give the wrong impression.

Q. But you were after a confession from him, weren't you?

A. I was after an interview and if it so evolved to a confession, yes, sir.

Q. All right, sir. So that was the purpose down there then, wasn't it? All right. Now, Fred, how long were you down there before he gave you this confession?

A. We arrived at the scene at 1:19 P.M. At 1:40 P.M. the suspect began relating details that had evolved, before, during and after the crime of his activities. So there would be twenty-two minutes --

Q. (Interposing) Twenty-two minutes from the time that you got out of the car there?

A. Yes, sir.

Q. But during that twenty-two minutes you were telling him that he was the one that did it, weren't you?

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Sheriff's office?

A. Yes, sir.

Q. When he got in the office, who was there besides you and Bill Woodard?

A. Are you talking about the first occasion or --

Q. (Interposing) Yes. Do you remember the approximate date of that? I believe it was September 7th.

A. Sergeant John Westmoreland was there.

Q. All right, sir. Now, September -- now, it was just a few days after Mr. Baker's death then, wasn't it?

A. I believe that is right.

Q. And you took a full statement from Mr. Woodard at that time, didn't you?

A. No, sir. I never did take a statement.

Q. You didn't take a statement from him?

A. No.

Q. Now, how many times did you take Bill Woodard to the Sheriff's office?

A. Three occasions.

Q. Three occasions. And the first occasion is when you picked him up at his home?

A. At his home.

Q. At his home. Did you take him to the Sheriff's office at that time?

A. Yes, I did.

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Q How did you get to the Sheriff's office?
A In my car.
Q All right. And was he under arrest at that time?
A No, he wasn't.
Q And what was the reason for going in your car instead of his?
A He -- I suggested going in my car.
Q In fact, you told him to go in your car, didn't you?
A I suggested that we could go in my car.
Q All right. Did you tell him that you would bring him back?
A I did.
Q And then what time of day did you get to the Sheriff's office on that particular day, of September the 7th? Early in the morning, wasn't it, Bill? About 10:00 o'clock in the morning?
A I don't remember the exact time.
Q You knew that he was a diabetic, didn't you?
A I heard that he was.
Q You knew that he hadn't had his shot that day, didn't you?
A I didn't know if he had had his shot.
Q And he stayed at the Sheriff's office there from 10:00 o'clock in the morning until about 4:30 that afternoon, didn't he?

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A. He did.

Q. Yet he was free to go at any time?

A. All he had to do was say so.

Q. Yes, sir. And he was questioned during that entire period of time, wasn't he?

A. He was questioned by two or three different officers.

Q. He wasn't permitted to have anything to eat during the noon hour, was he?

A. I am not sure that we got up before noon.

Q. You are not saying that you didn't, are you?

A. No, I am not.

Q. You didn't see that he got any food or insulin, did you?

A. Not this particular time, no.

Q. You took him up there, didn't you?

A. I did.

Q. And that's when you read him his rights? You didn't read him his rights, did you, when his rights were read to him?

A. Yes, I was.

Q. You signed as a witness?

A. I did.

Q. When the rights were read to him, they were just read from the card or a sheet of paper, I believe?

A. They were read and explained.

Q. Who explained them to him?

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A Yes, he did.

Q And that statement did not in any way involve him in anything that happened in Poinsett County, did it?

A The question -- the statement that he gave, the questions was about the incident that happened in Poinsett County.

Q All right. But he didn't give a statement that would incriminate or tend to incriminate him, did he?

A No, he didn't.

Q All right. So at that time you didn't have any concrete evidence against him, did you?

A At this particular time, no.

Q All right, sir. Then is that when you started stopping him on the way when he would take his wife to work?

A No, sir.

Q Was that before that or after that?

A That is after we checked his statement out and found a conflict at times.

Q And, Bill, you stayed right with him then until --

A (Interposing) No, I didn't.

Q You stopped him almost every day, didn't you?

A No, sir. I stopped him twice.

Q All right. Now, on the second time that was on October the 10th, I believe. Do you remember that? Do you remember coming down to Poinsett County with him?

A Yes, I do.

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A Somethings I said to him probably. I didn't question him about the incident if that is what you are referring to.

Q All right. And actually, Bill, when you read the rights to the man or when Fred read his rights, it was just a legal formality. You weren't interested in protecting Mr. Woodard's rights, were you?

A I was interested in doing my job.

Q You were interested in getting a conviction from him, weren't you?

A I was interested in solving the case.

Q You were interested in getting a conviction from him, weren't you, Bill?

A If the man was guilty at that time, I was interested in getting a confession.

Q And you believed him to be guilty?

A Yes, I did.

Q And that was your purpose of having him there in the office to get a confession and your purpose in taking him to the floodway?

A Yes, sir.

Q And you had no desire whatever to protect his rights, did you, Woodard's rights?

A I didn't violate his rights.

MR. DABNEY: I believe that is all.

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Q Where was the shotgun taken from?
A It was in a closet in my trailer.
Q All right. Did you find the gun for the officers or did they find it in the search?
A No, sir. I got the gun and laid it out for them. They wanted to see it.
Q All right. And were there other guns there?
A Yes, sir, there was.
Q What other type guns were there?
A There was a .22 automatic rifle and a .25 automatic pistol.
Q All right. And was that rifle and pistol taken from your trailer?
A No, sir, it was not.
Q Only the shotgun?
A Yes, sir.
Q What kind of shotgun was it?
A It was a .12 gauge Revelation.

THE COURT: I am not clear, Mr. Dabney, on what date he got this shotgun and gave it to the officers.

Q (By Mr. Dabney) Now, Bill, did they pick up the shotgun the same day that you gave the statement to the police officers at Jonesboro?
A Yes, sir.
Q Was that on the 7th?

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A Yes.

Q Who went down to your trailer with you to get the -- how did you get back to your trailer?

A I rode with Deputy Sheriff Bill Reese and another party that I don't know his name.

Q In the police car? Sheriff's car?

A It was in Mr. Crawford's car, yes, sir.

Q What time of day did you get back to your trailer?

A I would say it was a little after five.

Q That was five at night?

A Yes, sir.

Q So you had been gone from your home from approximately ten or 10:30 until 5:00 o'clock at night?

A Yes, I had.

Q And you had been accompanied by the officers in Craighead County all that time?

A Yes, I had.

Q And were any other items taken from your trailer besides this shotgun?

A No, sir.

Q You were describing the shotgun. What type was it? Was it a single barrel or a double barrel, a pump or what?

A It was a pump.

Q It was a pump gun. Okay. And was anything else taken

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from your trailer?

A. Not from my trailer. There was from my truck.

Q. All right. What was taken from your truck?

A. It was a hunting vest that I had in my tool box in my truck.

Q. And did the police officers take that with them?

A. Yes, sir, they did.

Q. Have you seen that hunting best since then?

A. No, sir, I have not.

Q. Have you seen the shotgun since then?

A. No, sir.

Q. You say you don't know where they have been during this time?

A. No, sir, I don't.

Q. You don't know what tests, if any, have been run on either the gun or the hunting bag?

A. No, sir.

Q. Was anything else removed from your trailer or your truck at that time?

A. Nothing but some phone numbers that I had written down.

Q. What?

A. Phone numbers.

Q. Telephone numbers?

A. Yes, sir.

Q. What did you do the following day then, Bill; did you see

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the police officers any more the following day?

A. No, sir. I went to Memphis to the V.A. Hospital and checked in the hospital.

Q. And what was the reason for your checking into the hospital, Bill?

A. My sugar and my nerves.

Q. All right. Explain to me now; I don't know what sugar means. How did it affect your --

A. (Interposing) It was running, I believe it was nine fifty. They said that I was about to go into a coma so they admitted me into the hospital.

Q. And how were you feeling at that time?

A. Very week and drowsy.

Q. Bill, how much do you weigh?

A. Right now about one hundred fifty-five.

Q. Now, how long did you stay in the Veteran's Hospital?

A. It was a period of two weeks I believe.

Q. All right. When you left the hospital, where did you go to?

A. We came back to Trumann, my home, and then we moved from Trumann to Bay.

Q. All right. And when you got to Trumann then, tell the Court whether or not you had any contact with the police officers.

A. No, sir.

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Q How long did you stay in Trumann until you moved to Bay?
A Approximately one week.
Q And when you moved to Bay then, where did you move to?
A We moved into a rent house that my parents have.
Q Do you have children, Bill?
A No, sir.
Q Is your wife employed?
A Yes, sir, she is.
Q Where was she employed at that time?
A Frolics Footwear in Jonesboro.
Q How did she get to and from work?
A I drove her to work.
Q Were you working at that time? Were you employed?
A No, sir. I was not.
Q Now, tell the Court, please, whether or not you had any contact with the police officers either at your home in Bay or taking your wife to work.
A Yes, I did.
Q How often did you have contact with the police officers from that time until the time that you were arrested in October?
A Almost constantly, daily.
Q Almost constantly?
A Yes, sir.
Q All right. And tell the Court, please, what police offi-

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cers that you had contact with.

A. Deputy Sheriff Bill Findley.

Q. And tell the Court, please, exactly what happened.

A. Well, in the morning when I would be taking my wife to work, he would stop me and tell me that he needed me to come up to his office and talk with him.

Q. He would stop you. How would he stop you?

A. With his blue lights.

Q. With his blue lights?

A. Yes, sir.

Q. ANd was that when your wife was in the car or were you alone?

A. Yes, sir, she was with me.

Q. She was with you?

A. Yes, sir.

Q. All right. And what did he tell you to do in regards to taking your wife to work?

A. He said go ahead and take her to work and come down to the office.

Q. And did you do that?

A. Yes, I did.

Q. And the first time when you got to Bay now, how long did you stay at the Sheriff's office in Craighead County? You say that you took your wife to work?

A. Yes, sir.

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Q And then he asked you to come over to the office?
A Yes, sir. He would sometimes keep me until 11:00 or 12:00 o'clock.
Q And what time would you get to the office?
A Just a little after 7:00.
Q And how many times did that happen?
A He took me to his office about seven times.
Q About seven times?
A Yes, sir.
Q All right. And when you got to the office, who would be there besides Mr. Findley?
A Well, it was just different officers at times.
Q All right. Tell the Court, please, what these officers would do in regard to questioning you about Mr. Baker's death or your involvement in it?
A The other officers never did ask me no questions. It was always Mr. Findley.
Q And you are telling the Court that he would keep you from around 7:00 o'clock until 10:00 or 10:30?
A Yes, sir, he would.
Q And that happened on how many occasions?
A About seven.
Q And that was before he carried you to Poinsett County?
A Yes, sir. It was.
Q Tell the Court, please, whether Mr. Findley made any

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threats to you during this time?

A. The only threat that he made that he was going to see that I done it.

Q. He was going to do what?

A. He was going to see that I was stuck with the murder of Mr. Baker.

Q. And what were his best words as best you can remember it?

A. He said that he knew that I done it and that he was going to see that I done it.

Q. All right. Do you recall what you told him?

A. I just told him that if -- that if he did arrest me, it would only be arresting an innocent man, that I didn't have anything to do with it.

Q. Now, Bill, I direct your attention to October the 10th, the tenth month and the tenth day. Did you go to the Craighead County Sheriff's office on that date?

A. Yes, sir, I did.

Q. Do you recall specifically that date?

A. Yes, sir.

Q. All right. Tell the Court, please, who you contacted before you went to the Sheriff's office on that date?

A. Deputy Sheriff Bill Findley stopped me that morning.

Q. Stopped you like he had been doing before?

A. Yes, sir. He did.

Q. Did he blue light you?

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A Yes, sir, he did.

Q And what did he tell you?

A He told me that he had a warrant for me at the Sheriff's office for some tropheys that I was supposed to have stolen.

Q He said that he had a warrant for you?

A Yes, sir.

Q Did he tell you that you were under arrest?

A Yes, sir, he did.

Q All right, sir. And did you go with him or --

A (Interposing) No, sir. He followed me around to the shoe factory. I let my wife off and I drove on up.

Q And he followed your car --

A (Interposing) Yes, sir.

Q -- from the time he stopped you when you took your wife to work and then he told you to drive your car back to the --

A (Interposing) Yes, sir.

Q -- to the Craighead County Sheriff's office?

A Yes, sir.

Q What time of day was it when you got the Craighead County Sheriff's office?

A It was just a little after seven.

Q In the morning?

A Yes, sir, it was.

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A He slapped me twice knocking me to the ground both times.

Q And you were out there with only the two police officers as I understand it?

A Yes, sir, I was.

Q And you are sure it is Mr. Findley that slapped you?

A Yes, sir.

Q What did he say just before he slapped you?

A He told me I was lying, that he knew it and that he was tired of messing with me.

Q All right. What did you tell him?

A I told him that I was not lying to him. He grabbed me by the head of the hair and pulled me up off of the ground.

Q Grabbed you by the hair and pulled you up off of the ground. What did you do then?

A Throwed me up on the trunk of Mr. Odom's car.

Q What did he do then when he put you on the trunk of the car?

A Just stood over me with his fist doubled up.

Q With his fist doubled up. Were you afraid of Bill?

A Yes, sir, I was. I was scared to death.

Q What happened next, Bill?

A I asked to be taken to a doctor and they refused.

Q How did they refuse?

A They just said that -- the words that Mr. Odom used,

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said that we weren't going anywhere and if we had to, we were going to stay there all night long until I signed that statement. He said he had a Coleman lantern and some mosquito dope in his trunk. If we had to, we would stay there all night.

Q Could you have left there if you wanted to, Bill?

A No, sir, they would have killed me.

Q Did they say words to that effect?

A Mr. Findley did, yes, sir.

Q What did he say?

A He said without a doubt that's what I got out of this. That's what he stated.

Q And what happened next?

A I told them that as I remembered it that they said I could have a lawyer there and they said that is right. And I said I wanted a lawyer and they refused that.

Q What did they -- who refused?

A Mr. Odom and Mr. Findley.

Q What did they tell you?

A Again they said that we were going to be there all night if we had to .

Q All right. And what happened next?

A Then they started telling me how they found the body, how many feet it was and they would ask me if that was right.

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Q That was the one at 11:27. So he wasn't there and he hadn't read you your rights when you had your insulin shot, were you?

A Yes, he was.

Q All right. What happened after Mr. Odom read your rights to you for the second time that day?

A Well, we went from the Sheriff's office to the county jail where I was fingerprinted and mug shot.

Q All right. And then what happened?

A They they said that we were going to go get something to eat and return back to the jail.

Q All right. Didn't tell you anything or ask you anything about going down to Payneway to look at the site there, that they wanted to ask you some questions?

A No, sir, did not.

Q Didn't say anything about that?

A No, sir.

Q Had they told you that your answers to questions that they had given you on the 7th didn't fit out and that they had checked them out?

A No, sir, they didn't.

Q Didn't tell you that?

A No, sir.

Q Didn't tell you why they were questioning you or why they had you there?

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report?

A. I was in the city of Wynne, approximately twenty miles from Harrisburg.

Q. And what did you do upon receiving the report?

A. I proceeded into Harrisburg and reported to the County jail here in Harrisburg.

Q. And when you arrived at the county jail, who was present?

A. Sheriff Crawford, Fred Odom, and Bill Findley, the radio operator, I forget who he was at this time.

Q. All right, sir. And how long were you at the jail before Bill Woodard and Fred Odom left?

A. They left just about the time that I was coming in.

Q. And you didn't have a chance to do any more than speak to them?

A. I just spoke to them as they was ---.

Q. And did you have an occasion to take a statement from Billy Woodard while he was in custody in the Poinsett County jail?

A. Yes, sir, I did.

Q. And approximately when was that statement taken from him, please?

A. It was later on in the evening, approximately 6:00 P.M., somewhere in that neighborhood.

Q. Was it a written statement?

A. Yes, sir, it was.

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Q Now, was this statement prefaced with the usual rights of a witness about testifying against himself?

A Yes, sir, it was.

Q Tell the Court, please, what happened with reference to the reading of the rights to Billy Woodard at that time.

A The rights were read to the defendant and in turn asked if he wanted to make a statement, and give us a statement.

Q Who read the rights to him?

A Sheriff Crawford.

Q All right, sir. And you heard Sheriff Crawford read his entire rights to him?

A Yes, sir.

Q And then he followed it from the first right down to the end?

A Yes, sir.

Q He read the whole thing to him?

A Yes, sir.

Q All right. And tell the Court, please, what, if any, explanation of his rights were given to Woodard at that time.

A Yes, he was asked if he knew what the rights meant as each question was asked on his rights.

Q All right. And were his rights explained to him?

A Yes, sir, they were.

Q Who explained them?

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A Sheriff Crawford.
Q Sheriff Crawford explained his rights to him after Sheriff Crawford had read his rights to him?
A Yes, sir.
Q And then did you take a statement from him in long hand or record the statement at that time?
A At that time it was taken in long hand.
Q And did you take the statement yourself?
A Yes, sir, I did.
Q And who else was present at the time that you got the statement?
A Officer Reese had arrived.
Q All right, sir. And when -- who was questioning Woodard and who was answering the questions? Who asked the questions?
A Sheriff Crawford, he was asking the questions before I asked Bill if he wanted to give us a statement or if he had rather that I write the statement out.
Q He had rather that you write it out. All right. And did you write the statement out?
A Yes, I did.
Q Beginning with the first part of the statement -- now, you say that Sheriff Crawford asked the questions?
A Yes, sir, he did.
Q And you wrote the answers down?

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A. Yes, sir.

Q. Who gave the answers to these particular questions?

A. The defendant, Billy Woodard.

Q. And did Sheriff Crawford witness the statement after it was made?

A. Yes, sir, he did.

Q. Did he sign it as a witness?

A. Yes, sir, he did.

Q. Do you have a copy of that?

MR. BURNETT: You have got a copy that you were given yesterday.

Q. (By Mr. Dabney) This is the statement dated 10th and 10th, '75?

A. Yes, sir.

Q. And this statement is in your handwriting?

A. Yes, it is.

Q. And Sheriff Crawford is the one that asked the questions?

A. Yes, sir.

Q. And all you did is wrote down --

A. (Interposing) I just wrote down the answers of the defendant.

Q. But there are no questions listed in this, are there?

A. No, sir. There aren't.

Q. So actually, this is not -- does not include the questions and the answers?

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A No, sir, this does not.
Q This was not a narrative form of the question and answer form, is that correct?
A Yes, the usual procedure if the defendant wants to give us a statement.
Q I see that it is witnessed by Billy Reese and Gerald Crawford?
A Yes, sir.
Q And did you write all of the statement out, Jim?
A Yes, sir, I believe I did.
Q Towards the last of it I notice that it looks like it might be a different handwriting there. Is that your handwriting towards the last, too?
A Yes, sir.
Q That is your handwriting?
A Yes, sir.
Q Now, what was Billy Woodard's appearance at the time that you examined him?
A He appeared to be stable.
Q And did you know that he was a diabetic at that time?
A Not at that time I didn't.
Q Did you learn later that he was a diabetic?
A Yes, sir, I did.
Q While he was incarcerated in the Poinsett County jail, did he in fact have some sort of reaction from his dia-

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betic condition requiring hospitalization?

A. I heard that he did. This was after I left.

Q. You left the Sheriff's department soon after that I understand?

A. Yes, sir.

MR. DABNEY: I believe that is all that I have.

oOo

CROSS EXAMINATION

BY MR. BURNETT:

Q. Officer Walker, does this statement dated -- shown as 8:00 P.M. on the 10th day of October, 1975, witnessed by yourself and Bill Reese and signed by Bill Woodard, was this statement taken after reading the defendant his rights?

A. Yes, sir.

Q. The Miranda warning?

A. Yes, sir, it was.

Q. And I think that you have already testified in the procedure that you followed you asked him if he understood his rights when he answered the questions?

A. Yes, sir.

Q. And does this voluntary statement form contain a waiver of rights?

A. Yes, sir, it does.

Q. And are each page marked, initialed or signed by the de-

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fendant?

A. Yes, sir.

Q. And does it also contain language purporting to be the Miranda warnings at the top?

A. Yes, sir. It does.

Q. All right. And did Mr. Woodard ever raise any questions about understanding his rights?

A. No, sir, he didn't.

Q. Did he appear to understand it to you?

A. Yes, sir, he did.

Q. Did he have all of his faculties and appear to be intelligent?

A. Yes, sir.

Q. Did he answer your questions clearly and concisely?

A. Yes, sir, he did.

Q. Did he freely and voluntarily make this statement?

A. Yes,sir.

Q. And I believe it is shown that it started at 6:25 P.M.

A. Yes, sir, it did.

Q. And he was advised of his rights again?

A. Yes, sir.

Q. To your own knowledge, do you know whether he had been advised of his rights four or five times prior to that?

A. I wouldn't have any idea.

Q. Well, have you been told that?

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A I had been told.

Q Did Woodard tell you that; that he had been advised of his rights several times before?

A I don't remember if he did or not.

MR. BURNETT: Your Honor, we would offer this as State's Exhibit Number Five and perhaps we may want to use it.

THE COURT: I gather this was the copy which had been furnished the defense?

MR. BURNETT: I am making another copy. I am sorry.

THE COURT: I assume that the defense would desire to retain this copy. It will be admitted into evidence at this time for the purposes of this motion and a substitute copy or a copy substituted so that the defense can retain his copy.

[Whereupon, said Voluntary Statement was received and marked State Exhibit Number Five; Witness: Walker.]

MR. BURNETT: Your Honor, I would like to state for the record at this time -- I don't mean to divulge any trial strategy that we might have at this time, but there is a distinct possibility that if the Court sees fit to admit that statement based upon the testimony here today, that the State may very well choose to utilize that statement as well as the other two that we previously mentioned that we

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intend to offer.

THE COURT: Permit the reporter to mark it as Exhibit Five.

Q (By Mr. Burnett) Mr. Walker, I believe that the following morning you took an additional statement from him. That would have been 10/11/75, did you not, sir?

A Yes, I did.

Q And what type of a statement was that? Was it a recorded statement?

A A recorded statement.

Q And did you advise Mr. Woodard of his rights again?

A Yes, sir, I did.

Q And did you tell him the reason or give him any reason or purpose for taking a recorded statement?

A Yes, sir, I did.

Q And what was that reason that you gave him?

A That I would have something to go by on when I retyped my statement.

Q All right.

A And to go in my case file.

Q Did he have any objections to making a statement to you?

A No, sir, he didn't.

Q And was he rested and comfortable and had he been fed?

A Yes, sir.

Q Did you threaten him, abuse him, or mistreat him in any

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Q You feel like that the ends justified the means or something like that, don't you, on the investigation?

A Will you explain that?

Q I mean that if you have to get gruff with a prisoner, you can get gruff with him, can't you?

A No, sir.

Q It wasn't a Sunday picnic, was it?

A I just said no murder is.

Q And you all went out there for the express purpose of breaking him down?

A We went out there for the express purpose of taking a statement from him.

Q And you did threaten him on several occasions, didn't you?

A I did not.

Q What did you say to him, Bill?

A I don't recall the exact words.

Q You were out there for --

A (Interposing) We talked about finding him and about him being sick.

Q And you repeated over and over again that he had killed Mr. Baker, didn't you?

A I asked him; I didn't tell him.

Q You told him just exactly how he did it, did you not?

A No, I didn't.

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Q That's not it? Now, you did knock him to the ground one time, didn't you?

A No, I didn't.

Q Hit him twice?

A No, I didn't.

Q Threatened to keep out there all night if necessary?

A No, I didn't.

Q Do you remember Mr. Odom telling him that he had a Coleman lantern and they would stay out all night?

A I don't remember that statement.

Q Bill, you would have stayed out all night if it had been necessary, wouldn't you? If you thought it would have been necessary, you would have?

A If I thought it would have been necessary, I would have.

MR. DABNEY: That is all.

MR. BURNETT: I don't have anything further.

THE COURT: Mr. Findley, did you or Officer Odom ever make a statement to him that if he would sign a confession that he had the easiest out in the world and that you would see that he got medical help?

A No, sir.

THE COURT: Did you or Officer Odom ever tell the defendant Woodard that you knew that he did it and that you were going to see that he was stuck with

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THE COURT: We will proceed.

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[Voir dire reported but not transcribed at the request of the defense attorney.]

Recess at 5:00 P.M.

[REPORTER'S NOTE: The following proceedings took place following release of the jury for the day.]

MR. BURNETT: It has been agreed between the State and the defendant that Dr. Rodney L. Carlton, the State medical examiner's testimony, should he be called to testify and having testified in the matter of State versus Woodard, Dr. Carlton would have testified that the cause of death was shotgun wounds of the head, back and left shoulder; and that his report marked State's Exhibit Number One could be introduced into evidence. Further, that the doctor would testify that the wound to the back produced an injury, six inch square, and that that would be consistent with pathological findings of a shot fired at a distance of approximately six feet; that the injury to the left shoulder would be consistent with a shot fired at a greater distance and that the doctor would be unable to testify as to the exact distance, it being a greater range. If called to testify, his testimony would further be that there

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is a probability that the shoulder wound also produced a wound to the occipital region of the head; further that the head wound producing a fourth wound from a third shot would have been fired at a range of approximately one foot; and that the doctor removed from the cranial area of the head a plastic power piston; and that that shot would have been fired at an extremely close range; that the head wound produced upon probing and examining, two different size shot consistent with the pellets, consistent with the probability that a fourth wound was produced by the shoulder wound.

The wounds to the body are definitely three in nature, one to the left side of the back and one to the left shoulder and one to the left side of the head. The left side of the head did produce two separate types of pellets indicating that two shots or two wounds were received, that the shoulder wound could have been mate to one of the wounds of the head, one of the wounds of the head was definitely close range, approximately a foot or eighteen inches, and that is just an estimation.

MR. DABNEY: That the doctor would further testify that the four wounds could have been produced by four separate shots, that pellets were removed from

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Q What kind of a hunter are you?
A Coon hunter.
Q All right. Have you ever hunted on the floodway south of Payneway?
A Yes.
Q All right. Do you remember hunting back there on the fifth of September, '75?
A No, I was back there on the 6th.
Q Was it on the sixth? Do you remember what day of the week it was?
A Saturday. Saturday night.
Q Who was with you when you were hunting?
A Richard Harper, Jerry Bearden.
Q Did anything unusual happen that night when you were hunting?
A I run up on this body is all, if that's what you're talking about.
Q Tell us about running up on the body.
A Well, we was just traveling around the field and got this odor and looked in the edge of the weeds and there was a body.
Q Did you smell something yourself?
A Yes, sir.
Q Can you describe the smell?
A I wouldn't try to.

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fourth wound was produced by the shoulder wound. The wounds to the body are definitely three in nature, one to the left side of the back, one to the left shoulder, and one to the left side of the head. The left side of the head did produce two separate types of pellets indicating that two shots or two wounds were received, that the shoulder wound could have been mate to one of the wounds of the head. One of the wounds of the head was definitely close range, approximately a foot or eighteen inches, and that is just an estimation; that the doctor would further testify that the four wounds could have been produced by four separate shots; that pellets were removed from the head consistent with four or five shot and consistent with number eight or nine shot; that these pellets and power pistons were delivered to Captain Paul McDonald, whose report is admitted as State's Exhibit Number Two by stipulation.

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[Whereupon, said medical examiner's report and ballistics report were received and marked State Exhibit One and Two respectively.]

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THE COURT: At this time do you desire to read any portion of the autopsy report into the record or submit it to the jury?

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the interview was conducted at 1:21 P.M.

A. Yes, this was the beginning.

Q. That was the beginning of your interview?

A. Of the actual interview after the rights waiver was -- the rights form was explained to him.

Q. All right. And when was that interview concluded? Approximately is all right.

A. Sir, I have no notation on my actual notes, however, I would say from thirty to thirty-five minutes, the actual time that I spent with the defendant at that time.

Q. All right. And did he sign an affidavit or a statement at that time?

A. No, sir. The only thing that he signed at that time was a statement of his rights, that he did understand his constitutional rights.

Q. That interview lasted about forty-five minutes?

A. From thirty to thirty-five would be my estimate, sir; I cannot be sure.

Q. And at that time, did he give you any information that would in any way indicated that he may have had anything to do with Mr. Baker's death?

A. The only thing that he stated to me during this particular interview was that he was with the victim in this case on the morning of the victim's -- when he became missing from Jonesboro, from his home. That is the only link as

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such that would indicate to me any suspicion at that time.

Q All right, sir. And he frankly admitted to you that he was at Mr. Baker's home, did he not?

A Yes, sir, he told me that he was at his home, yes, sir.

Q And, of course, your investigation showed that other people were at his home, too, didn't they?

A My particular investigation, no, sir. I could only speak of hearsay by saying that I knew someone else was there that morning.

Q All right. Who else was there that morning?

A I have no idea what their names are. This just came up in conversation during the investigation as it progressed through the latter part of September and into October.

Q And that was conversation with another police officer?

A Yes, sir. This was with officers of the Craighead County Sheriff's department.

Q All right. And was that on the same date that Mr. Baker left his home?

A No, sir. This would have been during the entire investigation. I can't say which date this conversation was actually held between myself and these officers, but I was informed in fact that they had information or that they had talked to some people --

Q (Interposing) Who were you informed by, please?

A If I am not badly mistaken, it was Sheriff Johnson, the

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A Yes, sir. There were several officers involved and a large investigation, yes, sir.

Q And then on September -- October the 10th then?

A Yes, sir.

Q Where did you first see Bill Woodard?

A As he left the office of the Sheriff in the courthouse in Jonesboro.

Q What time of the day was that?

A I could only give you an approximate time, at approximately 11:15 A.M. that I first viewed the defenant as he walked out of the Sheriff's office or of the office of the Sheriff I might say.

Q He was in the Sheriff's office at Jonesboro at that time when you first saw him?

A That's when I first saw him.

Q At approximately what time?

A At approximately 11:15.

Q All right. Who else was with him at that time?

A He was in the office with Sheriff Floyd Johnson.

Q And --

A (Interposing) Behind a closed door when I arrived there. In other words, I did not see anyone else inside that office.

Q Did you go into the office?

A No, sir.

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Q You don't know what went on behind the closed doors?

A I have no idea, sir.

Q And tell the Court, please, what you did next in regards to your investigation or regarding Bill Woodard?

A I talked with Sheriff Johnson for approximately ten or fifteen minutes in the hallway of the courthouse and I asked if I might be allowed to again interview the defendant in this case, Billy Woodard, and the Sheriff agreed that I could interview if I so desired. I asked that one of his deputies accompany me and at 11:30 A.M. myself and the suspect at that time, Billy Woodard -- I informed him of his constitutional rights as described earlier.

Q All right. Tell us how you informed him of these constitutional rights. Tell us why you thought it was necessary.

A Sir, it is a department policy when interviewing anyone in a criminal case whereas any information might be obtained or might be told or spoken by the person being interviewed, that a rights form be completed and that the person's right be fully understood by that person before such an interview begins. This was the purpose of completing this form at this time.

Q All right. And did you read the rights statement to Bill Woodard yourself?

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ion, the law is very specific on what rights are required and we will so stipulate that he read him those rights as required on that page and that he didn't explain any of them any more after he answered yes. Just to save some time, we are wasting time and is something that is very irrelevant and the law is very specific on it and there is no need of it.

MR. DABNEY: If Your Honor please, I appreciate Mr. Everett's concern for saving time. I certainly --

THE COURT: You will be permitted to cross examine the witness in what manner he was advised of his rights. A matter of law should be addressed to the Court.

MR. DABNEY: Thank you, Your Honor.

Q (By Mr. Dabney) Now, I note that is signed by Bill Findley as a witness?

A That is correct, sir, and myself.

Q Was that signed in your presence?

A Yes, it was.

Q All right. Then after this was signed, what happened next?

A Well, the defendant signed before myself or Deputy Findley and the time and date was noted.

Q All right, sir.

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A After that, the time so noted was 11:27 A.M. and at 11:30 A.M. myself and Deputy Sheriff Bill Findley accompanied the suspect and traveled to the I.D. section of the Craighead County Sheriff's department, which is located downstairs under the county jail and there the suspect's fingerprints were rolled, impressions were rolled, by myself and mug shots were taken of him.

Q And you did print him then?

A Yes, sir.

Q After he had signed the statement. Took him to the county jail to do it?

A After he had signed his statement of rights, yes, sir.

Q All right, sir.

A And this is also a procedure which is common to our department, that is, it is departmental policy for us to photograph and fingerprint anyone who has reached the accusatory stage in an investigation.

Q Of course, he had reached the accusatory stage at that time, hadn't he?

A Yes, sir. Due to previous -- due to the previous five weeks' investigation before.

Q And you told him that he was a suspect, of course?

A Yes, sir.

Q And you took his picture?

A Yes, sir.

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Q And then what happened next?

A At 11:48 A.M. on October 10th, 1975, myself, Deputy Findley, and the suspect proceeded to the X & N Restaurant, which is located on East Nettleton Street in Jonesboro and there had lunch in the car.

Q Had lunch in the car?

A Yes, sir.

Q Was that a drive-in?

A Yes, sir.

Q What happened next?

A At 12:25 P.M. we finished eating. I asked the defendant if he would object to traveling to the scene of where the body of Mr. Baker had been found. He had no objection whatsoever and said it would be all right to accompany us to the scene.

Q What were his exact words, Fred?

A Sir, I can't remember his exact words.

Q Now, you came over to Craighead County on that particular day for the express purpose for taking him out to the scene where the body was found?

A No, sir. I was called at my home in Wynne on that morning by Sheriff Johnson. He asked that I travel to Jonesboro and talk with the suspect who was then a suspect in the theft of some dog trophies which had been stolen from a fair ground booth, I believe, in Jonesboro

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on the previous date.

Q As a matter of fact, there have been charges placed against him on the theft of the trophies?

A I really don't know, sir.

MR. BURNETT: I am going to object to Mr. Dabney asking that question.

MR. DABNEY: If Your Honor please, I think that the jury is entitled to know some of the answers.

MR. BURNETT: Well, I would like for the record to reflect that it was brought out by defense counsel and at his request and I will withdraw my objections to the questions being answered.

THE COURT: You may continue.

MR. DABNEY: Thank you, Your Honor.

Q (By Mr. Dabney) Now then, it was your information that he was under arrest or there was a warrant for these other charges, wasn't there?

A No, sir. I was just asked that I travel to Jonesboro for the purpose of interviewing him in relation to this theft.

Q Did you interview him in relation to the theft?

A No, sir. After talking with Sheriff Johnson, I do not recall the exact words which were said, but I can only say, and it would be hearsay and an assumption on my part.

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THE COURT: You cannot testify as to what Sheriff Johnson or somebody else may have told you, Mr. Odom. You may testify as to what you did after conversation with Sheriff Johnson.

Q (By Mr. Dabney) What did you do?

A I interviewed the suspect, Billy Woodard, in reference to the case involving Mr. Baker's death.

Q But you didn't say a word to him about the possible theft of any trophies, did you?

A No, sir, I didn't.

Q It was a ruse really to get him into the Sheriff's office?

MR. BURNETT: Your Honor, I'm going to object to that, the reference to a ruse.

THE COURT: Rephrase your question, Mr. Dabney.

Q (By Mr. Dabney) You did come over from Wynne at the request of Sheriff Johnson for the purpose of interviewing Billy Woodard about a theft of some trophies?

A I was called to come to Jonesboro for that purpose, yes, sir.

Q And yet you never interrogated him at all about any theft of trophies, is that correct?

A That is correct.

Q And you just happened to bring your file in on the case here in Poinsett County?

A No, sir, I didn't just happen to. I kept that file in my

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car at all times under lock and key during this entire investigation.

Q All right, sir. And then when you had lunch then, you knew that you were going to go down to Poinsett County and check out Bill Woodard, didn't you?

A We were intending to leave the K & N Restaurant after lunch and to travel to the scene of the crime after requesting from the defendant if he had any objections to making that trip with us.

Q You did go down to where Mr. Baker's body was found then?

A Yes, sir. We drove directly from the K & N Restaurant down highway 63, Payneway, left on 14 and right on the west floodway levee to the scene.

Q Who was in the car?

A Myself, the defendant, who was seated in the left rear, and Deputy Sheriff Bill Findley seated on the passenger's side in the front.

Q Fred, I believe you testified you had just left Jonesboro. Did you leave in your car or in a Craighead County Sheriff's car?

A Left in my 1974 Chevrolet unmarked police car.

Q Were you driving the car?

A Yes, sir, I was.

Q And two of you police officers, you and Deputy Sheriff Bill Findley?

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A That is correct, sir.
Q And Bill Woodard?
A That is correct.
Q And you all did go down to where you had found the body that you earlier described?
A Yes, sir.
Q And when you got down there you talked to Bill Woodard?
A Yes, sir.
Q And accused him of the death of Mr. Baker, didn't you?
A No, sir.
Q What did you tell him?
A I did not accuse --
Q (Interposing) What did you tell him, Fred?
A I interviewed him -- first of all, when we got out of the car after arriving at the scene at 1:18 P.M. on October the 10th, he was shown the photographs that have been admitted into evidence here.
Q And I suppose those are those terrible looking photographs that were shown to the jury before you --
A (Interposing) Yes, sir. Those are those terrible looking photographs, yes, sir.
Q Now, Fred, you couldn't tell -- you are not a medical man but you don't know what caused the deterioration of the subjects of the photograph was from a gunshot --
MR. BURNETT: (Interposing) Your Honor, I'm going

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to object to Mr. Dabney testifying now. He has prefaced the question, if you will call it question, by Fred, you are not a medical man and you don't know, so why ask him the question? I am objecting to it.

MR. DABNEY: I would like to --

THE COURT: Rephrase your question, Mr. Dabney. If the witness knows, he may certainly testify.

Q (By Mr. Dabney) Fred, was the body in a state of decomposition?

A Yes, sir, a very bad state, the head portion and the left shoulder portion.

Q And actually you don't know what part of his -- the damage was done from the shotgun wound and what part from decomposition, do you?

A No, sir.

Q But the body had been there for several days?

A It was my understanding that it was there from September the 3rd until September the 6th, late at night, September the 6th.

Q All right. At that time now, did you know when you had Bill Woodard there at the scene before you had shown him these pictures, did you know where Mr. Baker died or where he met his death?

A Where he died?

Q Yes, sir, where?

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A Did I know?
Q Yes, sir.
A No, sir.
Q All right. And that was on October the 10th?
A That is correct.
Q And you had been investigating this for some five weeks?
A Yes, sir.
Q And you and approximately twenty more or less other police officers?
A Well, sir, I don't know about the number. There were four State investigators involved including myself. And there were Sheriff Crawford and his deputies, Sheriff Johnson and part of his staff. I would say probably twelve officers involved altogether.
Q And at that time that you did not know for a fact whether or not Mr. Baker had had any money taken from him, did you?
A For a fact?
Q Yes.
A No, sir.
Q All right, sir. And you showed Bill Woodard those pictures there?
A Yes, sir, I did.
Q What did you tell him when you showed them to him?
A I explained the location, that we were standing within

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approximately six feet of where I stood when these photographs were taken at the scene. I explained that this was the position of the body, this was the way that I found it or we found it. At that time Bill Woodard made the statement that he knew the man, not well, but he didn't care if he was dead. He could care less. That was at the beginning of the interview right after our arrival.

Q At that time he told you that he had nothing to do with Mr. Baker's death, didn't he?

A He said I didn't kill him. I knew him, not well, but I could care less if he is dead.

Q All right, sir. What happened next?

A We sat and talked. We went around to the back of the car and we sat down on the trunk of the car and talked. Everything that was said, I cannot recall. There was no loud boisterous language used.

Q But it was accusatory language, wasn't it?

A No, sir, I wouldn't say it was. You are asking for an opinion, I assume.

Q All right. Was it loud?

A No, sir.

Q Did you raise your voice to him?

A No, sir, I didn't.

Q Were you talking calmly like you are doing to me now?

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A. Yes, sir, I was.

Q. Very deliberate, calmly and deliberately?

A. Yes, sir. Talked very calmly.

Q. And you said, Bill, won't you please tell me that you committed this crime?

A. No, sir, I did not say that.

Q. What did you tell him?

A. I don't recall telling him anything, Mr. Dabney. He began to cry after it was discussed about -- the matter came up about his in-laws, his father-in-law and mother-in-law that -- whom I don't know but whom I understood had -- were very religious and had prayed for this man over a length of time since this had happened and before. When this subject came about, the defendant began to cry and began to confess and tell of the activities on that day that Mr. Baker met his death.

Q. All right. Now, that was with some encouragement from you, of course, wasn't it?

A. I would not call it encouragement, sir, it was just some interview being conducted.

Q. Just an interview --

A. (Interposing) Yes, sir.

Q. About a mile from nowhere?

A. Six point nine miles south of Payneway, yes, sir.

Q. In a bean field?

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A At the edge of a bean field, yes, sir.
Q At a wooded area?
A At the edge of a wooded area.
Q And you showed him pictures that we were discussing?
A Pardon?
Q And you showed him pictures that we were discussing earlier?
A Yes, sir. I showed him each and every one of those pictures.
Q Every one of the pictures?
A Yes, sir.
Q And described them in vivid detail to him, didn't you?
A No, sir, I didn't describe them. I did show them to him and I described -- these did depict the way in which the body was found.
Q Did you recount to him this is the particular way the body was found and you reconstructed it for him, didn't you?
A The position of the body?
Q Yes.
A I noted that these pictures did depict that this was the way that the body was found.
Q And you suggested to him that it was found some twenty something feet from the roadway or something to that effect?

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was standing upon the firing of the first shot.

Q Fred, at twenty-two steps with a twelve gauge shotgun, he would have blasted a man down, wouldn't he?

A He would have knocked him down, yes, sir.

Q From that close range, he wouldn't have moved, would he?

A Would not have moved, sir?

Q Wouldn't have moved.

A I couldn't say that for sure, sir, because all kinds of circumstances would enter into that.

Q As I remember your statement, you said that you testified to something -- statement read that he -- that the man was crawling off, I believe you said?

A Yes, sir, that is what he told me.

Q Fred, if a man was shot from twenty-two steps with a shotgun, he wouldn't be crawling, would he?

MR. EVERETT: Judge, I object to that. It would be a conclusion. Let him testify to the facts and let the jury draw their own conclusions.

THE COURT: The objection will be sustained.

Q (By Mr. Dabney) Okay, Fred, you are telling this jury then that in a period of about forty-five minutes that he opened up and that he confessed all of this to you and you wrote down this statement consisting of ten pages?

A No, sir. I am not telling you that at all.

Q How long did it take you?

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A We arrived at the scene at 1:18 P.M. on October the 10th. At 1:40 P.M., the suspect began to relate to the events that happened on September the 3rd involving the death of Mr. Baker. It was not until he had gone through the complete facts and this reenactment was done at his direction. And the actual statement consisting of ten pages was signed at 4:28 P.M.

Q 4:28 P.M. So he was with you then until -- this was signed out in the bean field there until 4:28 P.M., wasn't he?

A Sir, he never was in a bean field. He was along in a farm road along side the woods and adjacent to a bean field; I assume that is what you mean.

Q Yes, sir. Alone with you and --

A (Interposing) Deputy Findley, yes, sir.

Q All right, sir. Fred, I see a number of interlineations here. I refer you specifically to page five.

A I am sorry, Mr. Dabney, I didn't hear what you said, sir.

Q There are interlineations on page --

A (Interposing) I am sorry again; I don't understand what you mean by that.

Q All right, sir.

A That word.

Q Let me use some --

A If you put it in layman's language, I may be able to under-

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A Seems like I do but I couldn't swear to it, David, I mean --

Q (Interposing) You didn't take them into your possession?

A No, sir. I got the gun but I didn't -- I don't remember about the bottles.

Q But you do remember seeing them there?

A Yes, sir. It seems like I do remember seeing some bottles but I couldn't swear to it.

Q All right, Sheriff. I am asking you to identify -- I am handing you five separate pages. I believe that they are marked page one through five and ask if you can identify those.

A Two of these pages I signed and Billy Reese and them signed but they look like all of the same statement that we got from him, these two here I signed here. I would have to read this in here, all of this.

Q Okay, put them back in order, page one through five. Sheriff, is that a copy of the handwritten statement -- of the statement that was taken by you and Officer Walker?

A Yes, sir, I would say yes, sir.

Q All right, sir. And it is not in your handwriting, is it, Sheriff?

A No, sir.

Q Without reading it, Sheriff, just relate to me what it consists of as you recall it. Did the defendant confess

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to the murder?

A. Yes, sir, he did.

Q. To the homicide?

A. Yes, sir, he did confess to killing Mr. Baker.

Q. Did he go into detail as to how he did it step by step?

A. Yes, sir.

Q. If you would, just tell us in your own words, without reading the statement, basically what he told you.

MR. DABNEY: If the Court please, I had rather hear the statement.

MR. BURNETT: Well, I was going to let Mr. WAlker read it because he wrote it but --

MR. DABNEY: (Interposing) If the Court please, he is on the stand.

Q. (By Mr. Burnett) All right. Read it, Mr. Sheriff, page one through page five.

A. (Reading) "When I first got to Mr. C. M. Baker's house, just south of Jonesboro, he invited me in the house and eat some watermelon. While we were eating watermelon, Mr. Baker got a call and I heard him say that he could sign it any time. Then he asked me if I knew where a house trailer for sale was. I told him I seen one down around Anderson Tulley that I thought had a For Sale sign on it. I went out to put plug wires on his truck. When I had them on, Mr. C. M. Baker and myself went in

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Q All right. And how did he contact you?
A He stopped me.
Q He stopped you?
A Yes, sir.
Q How did he stop you?
A With the blue lights.
Q Blue lighted you again?
A Yes, sir.
Q And what did he tell you then?
A He said that I was under arrest, that he had a warrant at the Sheriff's office for me for theft of some trophies I was supposed to have stolen.
Q All right. And said you were under arrest?
A Yes, sir, he did.
Q All right. And what did he tell you to do?
A He told me that I was going to have to go with him and I asked him if I could take my wife to work first and he said yes and he followed me.
Q He told you that he would follow you?
A Yes, sir.
Q Did he follow you?
A Yes sir he did.
Q And did you take your wife to work?
A Yes, sir, I did.
Q Did you go over to the Sheriff's office?

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Q What did he ask you questions about?
A Just about the death of Mr. Baker, you know.
Q Billy, while you were there on October the 10th, was any request made of you at the Sheriff's office regarding the theft of the trophies?
A No, sir.
Q All right. Now, Mr. Odom got there and he started questioning you about Mr. Baker's death?
A Yes, sir.
Q And how long did he question you?
A Around twenty minutes, I believe.
Q All right, sir. And then were you asked to sign a statement of any kind at that time?
A I -- rights statement I believe is what it was.
Q A rights statement?
A Yes, sir.
Q Who asked you to sign that?
A Mr. Odom.
Q Mr. Odom. Is that Trooper Odom?
A Yes, sir.
Q And did you sign the statement?
A Yes, sir, I did.
Q I refer you to State's Exhibit Number Twenty-five and it contains a statement of rights. This appears to be the standard form of rights that is used on investigations

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A Yes, sir, they were.

Q All of them?

A Yes, sir.

Q And what was said to you as the pictures were shown to you?

A They kept making the statement that I was sorry for doing something like this. Then, I ought to be done the same way. I can't recall all they --

Q (Interposing) The best that you can, tell us what they told you.

A He mentioned something about did I have any kids and could I imagine how they would feel if someone were to do me this way and just, you know, stuff like that.

Q And how long did that continue, Bill?

A I don't know really.

Q Tell the jury, please, whether or not anybody threatened you.

A Yes, sir. I was threatened and also knocked around.

Q Who threatened you?

A Deputy Sheriff Bill Findley.

Q And tell the jury just what he said when he threatened you. What did he say and do?

A He told me that I wouldn't come out of this alive is the exact words that he said.

Q All right. And did he tell you that more than one time?

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A Yes, sir. He said it several times.

Q Several times. Tell the jury whether or not either of the officers hit you or slapped you.

A Yes, sir. Deputy Sheriff Bill Findley did.

Q What did he do?

A He knocked me to the ground twice and grabbed me by the head of the hair and threw me on the trunk of the car.

Q Knocked you down twice, grabbed you by the hair of the head and threw you on the trunk of the car?

A Yes, sir.

Q What did he say to you when he did this?

A He said that he knew that I was lying and that he was tired of having to fool with me.

Q And how did that affect you, Bill?

A Scared me to death.

Q All right. Did you actually fear for your life at that time?

A Yes, I did.

Q You were down about five miles south of Weona?

A Yes, sir.

Q In the company of you and two police officers only?

A Yes, sir.

Q Bill, how long was it after he had hit you, after Mr. Findley had hit you until you told them that you would give them a statement?

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A About three minutes later, I think; I am not sure.

Q And why did you give them a statement, Bill?

A Because I was afraid that if I didn't, I wouldn't leave there alive like the man said.

Q Now, tell me when you were giving this statement, tell the jury actually what happened, Bill. Start at the first of the beginning of this statement here. The statement says that about 9:30 or 10:00 o'clock on September the 3rd, I went to Mr. Baker's house on highway one towards Harrisburg from Jonesboro. Is that true?

A Yes, sir.

Q Next it says, "I went to his house to put some plug wires on his green 1969 Chevrolet truck with a white top." Is that true?

A Yes, sir, it is.

Q "I had put plugs and points in his truck a couple of weeks before this. I had found some bad wires on the truck. I told him if he would get the wires, I would put them on for him." Is that true?

A Yes, sir.

Q Now, Bill, I want you to tell me exactly what was going on at the time. Who was writing this down?

A Fred Odom.

Q Fred Odom. Where was he writing it? Where was he sitting or standing?

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A He was sitting on the trunk of the car.

Q On the trunk of the police car?

A Yes, sir.

Q And were you sitting or standing?

A No, sir, I was leaned up against the car.

Q All right, sir. And are these your statements here or what -- just tell the jury exactly how they came about.

A He would tell me how far the distance was between where Mr. Baker was supposed to have been shot and where he fell and then he would --

Q (Interposing) Let's begin with the first of it now, Bill. It says, "About 9:30 or 10:00 o'clock on September the 3rd, 1975." Did you start off telling him that or did he ask you questions?

A No, sir, he asked me questions.

Q He asked you questions. And did you give him answers to that or did he -- what happened?

A I gave him answers to these, yes, sir.

Q All right. Now, it says, "When I got to Mr. Baker's house at 9:30 or 10:00 A.M., I was driving my 1968 green and blue colored Volkswagen."

A Yes, sir.

Q Is that the color of your Volkswagen?

A Yes, sir.

Q All right. "I had a twelve gauge pump shotgun lying be-

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tween the bucket seats of my car."

A. No, sir, I didn't tell him that.

Q. Did you have a twelve gauge gun or any gun in your car at that time?

A. Yes, sir. I had a twenty-five automatic in my car.

Q. A twenty-five automatic?

A. Yes, sir.

Q. Did you have a shotgun?

A. No, sir.

Q. All right. Now, would you tell the jury how this statement got in here that you had a twelve gauge shotgun there?

A. Mr. Odom said that I was supposedly been carrying one in my car all the time.

Q. All right. How did it happen to get on this paper like this?

A. He asked me if I was and I said yes.

Q. Sir?

A. He asked me if I was carrying one in my car and I said yes.

Q. Carrying one --

A. (Interposing) A shotgun.

Q. He was the first one to mention a twelve gauge shotgun?

A. Yes.

Q. And you said yes?

A. Yes.

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Q Why did you say yes to something that wasn't true, Bill?
A Because I had already been knocked around enough.
Q Were you afraid for your safety at that time?
A Yes, sir, I was.
Q It wasn't loaded; the shells were in the pocket of the car door on the driver's side. Were there any shells in the pocket of the car or anywhere in the car?
A Twenty-five automatic shells, yes, sir.
Q Were there any shotgun shells there?
A No, sir.
Q Why did you say -- how did it happen to get on here that shells were in the car?
A Because they had found the twenty-five automatic shells in the pocket and he said that was -- I forget how he said it but he said it was good hiding place or something like that.
Q All right. It says, "There were three or four shells in the pocket." Did you tell him that?
A No, sir.
Q WEll, how did that get on here?
A Because the man was supposed to have been shot three times.
Q How did you find that out?
A Fred Odom.
Q He is the one that told you?
A Yes, sir.

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Q And he is the one that wrote it?
A Yes, sir.
Q On page two, Bill, it goes on, "Mr. Baker invited me into his house for some watermelon." Is that correct?
A Yes, sir, he did.
Q "We went in the house and he got the watermelon out of the refrigerator and we sat down at the table, a round table, brown in color." Is this your description of the table, brown in color?
A I told him that I thought that it was brown.
Q Thought it was brown. What did he say about it being in color?
A Sir?
Q What did you say about -- did you say brown in color?
A I said that I thought that it was brown.
Q All right. Thought it was brown?
A Yes, sir.
Q Is that true or false that you did go in the house and ate some watermelon at the table?
A Yes, sir, that is true.
Q All right. "While we were eating, he, Mr. Baker, said yes, ma'am." Now, what was he doing when he said yes, ma'am?
A He had received a telephone call.
Q Received a telephone call?

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A. Yes, sir.

Q. Now, what time of the day was that?

A. It was between nine and ten.

Q. All right. And the statement goes further, it says, "I know that it was a lady. He talked something about signing something for someone. He said that he could do it any time."

A. Yes, sir.

Q. And that was on the telephone?

A. Yes, sir.

Q. Was that true?

A. Yes, sir.

Q. "After we got through eating, I went outside and put the plug wires on his truck." Is that true?

A. Yes, sir, it is.

Q. "Mr. Baker stayed in the house. He said that he was expecting a call from Memphis about his brother. His brother was sick and in the hospital in Memphis." Is that true?

A. Yes, sir, it is.

Q. "After I got the wires put on his pickup truck he came outside where I was." Is that true?

A. Yes.

Q. "I asked him if he would like to ride down to Luke's Welding and Body Shop to get a dwell meter so I could set the

points on his truck. He said he would go if I wasn't going to be gone too long. I said we would just run down there and right back." Is that true?

A Yes, sir, it is.

Q All right. It says -- did Mr. Baker go down to Luke's Body Shop with you?

A Yes, sir, he did.

Q All right. The statement goes on further on page three and says, "We got down at Luke's and the shop doors were open but no one was there. I blowed the horn on Mr. Baker's truck. I was driving and he was with me on the passenger's side." Is that correct?

A Yes, sir, it is.

Q "I saw someone, a woman came to the window and looked out." You think you saw someone at the window?

A Yes, sir, I did.

Q All right. "I'm not sure if I saw her and then I drove back to Mr. Baker's house." Is that correct?

A Yes, sir.

Q "I regauged the plugs on Mr. Baker's truck." Is that right?

A Yes, sir.

Q "He went back into the house. I guess he was still waiting on the call about his sick brother." Is that correct?

A Yes, sir, it is.

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Q "After I gauged the plugs, I went and knocked on his door and told him I was going to try the truck out to see if it had stopped missing since I regauged the plugs." Is that correct?

A Yes, sir, it is.

Q "He told me to go ahead. I drove down by a nursing home on highway 1 and turned around and came back." Is that correct?

A Yes, sir, it is.

Q "I was gone about five minutes." Is that correct?

A Yes, sir.

Q "While we were eating the watermelon, he had mentioned something about wanting to buy a used house trailer and he asked me if I knew where there was one." Is that correct?

A He had asked me, yes, sir.

Q Tell me how this happened to get in the statement. Did he ask you about where he could buy a used trailer?

A He asked me if I had seen any.

Q That part is correct then, is that right?

A Yes, sir.

Q "That was for sale. I studied a minuted and I thought about a trailer that I had seen south of Payneway and west of the floodway levee. I thought that I had seen a For Sale sign on it when I was down in that area fishing

the day before, which was Tuesday, September the 2nd," is that correct?

A. No, sir, it is not.

Q. What part of it is not correct?

A. The part about seeing a trailer down there for sale.

Q. All right. Will you tell the jury, please, how this happened to be in the statement?

A. Mr. Odom asked me if that was supposed to have been the trailer and I said yes.

Q. And why did you tell him that?

A. Because I was scared.

Q. You were scared?

A. Yes, sir.

Q. Were you really afraid, Bill?

A. Yes, sir.

Q. All right. Next it says, "Mr. Baker told me he would buy the gas for my car if I would bring him down there to look at the trailer. I told him that I would and that I thought I had enough gas." Was anything said about him buying gas for your car?

A. No, sir, there wasn't.

Q. Is any part of that particular part of that statement true?

A. No, sir.

Q. How did it happen to get in the statement?

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A Because of the fact that I had some gas jugs in front of my car.

Q All right, sir. And whose words was that in putting this in the statement?

A Fred Odom.

Q Fred Odom. "I don't really know what time we left his house but we left his house and came to Harrisburg on Highway 1." Is that correct?

A No, sir.

Q How did that get in the statement?

A Mr. Odom asked me how I -- how we were supposed to have went down there and I said through number 1 highway.

Q And why did you tell him that?

A Because I was scared of him.

Q All right. Did you and Mr. Baker go down highway 1 to Harrisburg?

A No, sir, we did not.

Q All right, sir. And the statement goes on to say that "When we got to Harrisburg, we turned left onto highway 14." Is that true?

A No, sir.

Q "I saw Mr. Fagan, he lived in Trumann. He was standing out there at that car lot right next to Gerald Crawford's feed place." Is that true?

A Yes, sir. But it was not on a Wednesday; it was on Tues-

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day.

Q. On Tuesday?

A. Yes, sir.

Q. And how did that happen to get in the statement?

A. He asked me if I had seen anyone that I had knew and I told him that I had seen Fagan the day before.

Q. The day before?

A. Yes, sir.

Q. You told Mr. Odom that?

A. Yes, sir, I did.

Q. All right. And this is Mr. Odom's writing?

A. Yes.

Q. All right. And had you seen Mr. Fagan the day before that?

A. Yes, sir, I had.

Q. Was anyone in your car with you then?

A. No, sir.

Q. "Mr. Baker noticed a brown or coppertone colored '69 or '70 or '71 Chevy sitting at the car lot. He said it was a real clean looking car. Mr. Baker said that he would like to stop at the car lot on our way back and look at the car. I said it would probably cost two thousand dollars knowing Fagan if he was the one who run the car lot." Is that correct?

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A No, sir.
Q Now, why is that in the statement?
A That, I really can't answer.
Q Again, did you put it in the statement or did Mr. Odom?
A Mr. Odom put it in the statement.
Q "Mr. Baker said that he wasn't worried about the money because he had the money and he took his billfold out of his pocket and showed me a fold of money. A one hundred dollar bill was showing." Was that correct?
A No, sir.
Q Did you see -- have you ever seen Mr. Baker -- the contents of Mr. Baker's billfold?
A No, sir, I have not.
Q Have you ever seen a one hundred dollar bill in his billfold?
A No, sir, I have not.
Q Have you seen him with a hundred dollar bill?
A No, sir, I have not.
Q Now, Bill, tell this jury, please, if that is not true then, how did it get in this statement here?
A Mr. Odom stated that I was supposed to have took a hundred sixty dollars, I believe it was, off of Mr. Baker and that one of them was a hundred dollar bill.
Q It says that "I first thought about taking his money --" it says "When I first thought about taking his money, he

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put his billfold back in his pocket." Bill, did you ever think about taking any money from Mr. Baker?

A. No, sir, I did not.

Q. Did you take any money from Mr. Baker?

A. No, sir, I did not.

Q. How then did that get in the statement?

A. Mr. Odom said that I must have seen the money because he had -- someone had told him that I was desperately needing money. And he said this is supposedly how it all came about.

Q. And is that what he wrote down?

A. Yes, sir, it is.

Q. And that is still in the floodway area?

A. Yes, sir.

Q. "We drove on to Payneway on highway 14 and I turned off the highway at a place, I think it is called the Dew Drop In. It is painted red, I think. Anyway, we turned on the gravel road and came over to the house trailer I was thinking about, over near the west floodway levee. When we got to the trailer sign, what I thought I seen wasn't there and the trailer looked as if someone was living in it." Did you drive by a trailer there with Mr. Baker?

A. No, sir, Mr. Odom took me by a trailer.

Q. Mr. Odom took you by there?

A. Yes, sir.

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Q Is that before or after you made the statement?

A It was before.

Q Before you made the statement?

A Yes, sir.

Q All right. "And we -- " Is that the same day that you signed the statement?

A YEs, sir, it was.

THE COURT: Mr. Dabney, it is now 12:00 o'clock. Is this as good a stopping point as any?

MR. DABNEY: All right. That would be fine, Your Honor.

THE COURT: If you would, mark your place there then. Ladies and gentlemen, with the admonition not to discuss the case among yourselves, nor with anyone else, nor permit anyone to discuss the case with you or in your presence, you should not attempt to make up your mind or to form or to express any opinion until the case has been finally submitted to you for your verdict, you may stand in recess until 1:30. Court will be adjourned until 1:30.

[Recess at 12:00 Noon and reconvened at 1:30 P.M.]

THE COURT: Court will be in session. Let the jury take the box. If there are any witnesses in the courtroom, you will have to retire to the witness room. Mr. Dabney, you may continue with your direct

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examination.

Q (By Mr. Dabney) Billy, back before our noon recess, we were discussing this statement that you gave to investigator Fred Odom on October 10th, 1975. I am referring to page five of the statement and you had -- I had asked you something about the house trailer and ..."And as we came over to the house trailer, I was thinking about over near the west floodway levee." Now, who were you with at that time? You were talking about you were -- tell the jury whether or not the State Police had taken you by this particular area where a house trailer was located.

A Yes, sir, they did.

Q And your statement reads that "We went over to where the house trailer was located -- where the house trailer and sign that I thought I seen wasn't there and the trailer looked as if someone was living in it." Tell the jury whether or not Mr. Odom and Mr. Findley drove you by a house trailer in that area.

A Yes, sir, they did.

Q And will you tell the jury, please, how the statement regarding the house trailer got in your statement here.

A It had come up that Mr. Baker had asked me if I had seen a trailer and I had told him no, that Mr. Slinkard might have one for sale. And I told Mr. Odom this.

Q All right. You told him that but -- now, did you show

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Mr. Baker a trailer -- drive by a trailer with Mr. Baker?

A No, sir.

Q And that is not true?

A Yes, sir, that is not true.

Q And why is in this statement that you signed then?

A Mr. Odom put it there I guess.

Q Mr. Odom put it there. It is all in his handwriting?

A Yes, sir, it is.

Q And this was taken out in the wooded area down by the -- down south of Payneway then, was it not?

A Yes, sir. It was.

Q All right. Then your statement reads on to say that "We never did stop. There was a pickup truck there so we went on by, turned left at that little road and came up to a bridge." Did you take such a route as that with Mr. Baker?

A No, sir, I did not.

Q And why is that in the statement?

A Because that is the way that Mr. Odom took me into the floodway area.

Q And that is the way that Mr. Odom took you?

A Yes, sir.

Q All right. And that is the way that this statement reads written by Mr. Odom?

A Yes, sir, it is.

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Q It says, "We got to talking about fishing." Did Mr. Baker talk to you about fishing?

A No, sir, he did not.

Q And why is that in the statement?

A Me and Mr. Odom talked about fishing.

Q You and Mr. Odom talked about it?

A Yes, sir.

Q The statement again, of course, is written by Mr. Odom?

A Yes, sir, it is.

Q Your statement reads on, "I told him I had been down there fishing before and I mentioned a place where you could catch some good catfish. He said I would like to take a look at it." Did that happen?

A No, sir, it did not.

Q Why is that in the statement?

A Because I told Mr. Odom that that was the ditch that I had been fishing in the day before.

Q The day before what?

A September the 3rd.

Q You were there on September the 2nd?

A Yes, sir, I was.

Q You had actually been there on September the 2nd?

A Yes, sir, I had.

Q Were you there on September the 3rd?

A No, sir, I was not.

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Q Were you there on any date with Mr. Baker?
A No, sir.
Q It goes on and then it says again, "After we had looked at the fishing place Mr. Baker noted some cattle on the west levee." Did Mr. Baker ride with you down on the west levee of the floodway?
A No, sir, he did not.
Q And why is that in the statement?
A Mr. Odom is the one that put it in there.
Q Mr. Odom is the one that put it in?
A Yes, sir.
Q And the statement reads on that "He asked me what kind of land was over across the levee. I said mostly beans." Did Mr. Baker ask you such a statement as that?
A No, sir, he did not.
Q Why is that in this statement?
A I guess it's because there are all beans over there.
Q Beans are over there.
A Yes, sir.
Q And when did you see beans over there or a bean field?
A Every time that I would go over there hunting or something.
Q Were there beans there when you were out there with Mr. Odom?
A Yes, sir, there was.

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Q And this statement, of course, is wholly in Mr. Odom's handwriting?

A Yes, sir, it is.

Q The statement goes on to say that "He wanted to pull over on the levee and take a look so I pulled up on the levee and I asked him if he would like to ride down the levee. He said yes, that he wasn't in a hurry." Is that true?

A No, sir, it is not.

Q And again how did that happen to be in the statement?

A Mr. Odom said that if we had pulled up on the levee and then proceeded down to where the body was found.

Q And did you and Mr. Baker ride through that area at all?

A No, sir, we did not.

Q Is this statement true or false?

A False.

Q All right. Your statement goes on to read -- it says that "We turned off of the levee left and went across a wooden bridge. I always call it the Dead End Slough. We drove through a bean field and a farm road to an intersection and turned right and drove about a mile or a mile and a quarter. Then we came to a T intersection and turned right and came back to the woods. Then I turned left along side the woods on a small farm road about two hundred yards and my car ran out of gas." Did you, accompanied by Mr. Baker take any such route as that?

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A No, sir, we did not.
Q Did you, accompanied by Mr. Odom, take any such route as this?
A Yes, sir, we did.
Q And would you explain to the jury why that paragraph is in this statement?
A Well, that is the only way to get down into the area where the body was found that I know of.
Q And the statement -- the paragraph ends with the statement that "my car ran out of gas." Did you car run out of gas on September the 3rd?
A No, sir, it did not.
Q Nowhere?
A Nowhere.
Q All right. The next paragraph states that "I got out of the car and got a one gallon plastic white jug out of the hood which was full of gas. I keep the gas there because my car doesn't have a gas gauge. While I was pouring the gas in the car Mr. Baker got out of the car and said that he was going up the road and sit down." Did you have a plastic jug in your car?
A Yes, sir, there were two of them in there.
Q Was there any gasoline in them?
A No, sir, there was not.
Q Now, was there any gasoline in the plastic jugs on Sept-

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ember the 3rd?

A. No, sir.

Q. Was there any gasoline in these jugs any time after September the 3rd?

A. Yes, sir, I believe one of them had about a half a gallon in it.

Q. When was that, please?

A. I believe it was on Sunday; I'm not sure about the date.

Q. All right. And does your car have a gas gauge?

A. No, sir, it does not.

Q. Did you -- Did Mr. Odom know that the car didn't have a gas gauge?

A. Yes, sir, he did.

Q. When was that fact made known to him?

A. September the 7th.

Q. September the 7th. And where was your car at that time?

A. Sitting in my yard at Trumann.

Q. And Mr. Odom was at your home there?

A. Yes, sir, he was.

Q. And he examined your car thoroughly at that time?

A. Well, I wouldn't say thoroughly. He examined it.

Q. Did you have any objection at that time to him looking at your car?

A. No, sir, I did not.

Q. All right. It says on page seven on the statement, "I

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reached in the car and got my Revelation twelve gauge pump shotgun." Was your shotgun in the car?

A. No, sir, it was not.

Q. On September the 3rd?

A. No, sir.

Q. Was it there on September the 2nd?

A. No, sir.

Q. Was it there on September the 4th?

A. No, sir.

Q. All right, sir. You are telling the jury then that that part of the statement is not true?

A. Yes, sir, I am.

Q. Billy, would you tell the jury, please, how that happens to be in the statement?

A. Mr. Odom said that he had a witness that had seen my gun, shotgun, in between the bucket seats of my car and, of course, I said yes.

Q. And why did you say yes?

A. Because I was scared.

Q. You were still down in the wooded area?

A. Yes.

Q. With Mr. Odom and Mr. Findley?

A. Yes, sir, I was.

Q. In their police car?

A. Yes, sir.

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Q And they had driven you there from your home -- from Jonesboro?

A Yes, sir, they had.

Q All right. And the statement goes on to read, "I got three shotgun shells out of the door pocket of my car and loaded the gun," did you do that?

A No, sir, I did not.

Q Is that true then? Is it true or false?

A It is false.

Q Billy, again, why did you make that -- how did a statement like that happen to be in this statement?

A Because I guess -- I'm not saying this is the reason but there was a box of twenty-five automatic shells in the side pocket.

Q Twenty-five automatic?

A Yes, sir.

Q All right. Was there any shotgun shells in there?

A No, sir, there was not.

Q The statement reads, "I figured he had at least a couple hundred dollars judging from the money that I had seen in his billfold earlier over near Harrisburg." Had you seen any money in his billfold over near Harrisburg?

A No, sir, I had not.

Q Had you seen any bills in his billfold at any time?

A No, sir.

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Q. The statement reads, "I walked up to the front of my car and Mr. Baker was walking away from me." Is that true?

A. No, sir.

Q. Was Mr. Baker out of your vehicle at all to your knowledge?

A. No, sir, not to my knowledge.

Q. Not with you?

A. No, sir.

Q. Your statement reads that, "I put the shotgun to my right shoulder and shot him one time in the left back." Is that correct?

A. No, sir, it is not.

Q. Did you shoot MR. Baker?

A. No, sir, I did not.

Q. Anywhere, anytime?

A. No, sir, I did not.

Q. Is that true?

A. Yes, sir, it is.

Q. Bill, why would you sign a statement like that if it weren't true?

A. Well, I had already been knocked around enough. My life had been threatened.

Q. By whom?

A. By Deputy Sheriff Bill Findley.

Q. At the scene where you were at that time?

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A Yes, sir.

Q All right, sir. The statement goes on to say that, "He was about twenty-two yards away from me." Now, where did you get the measurement of twenty-two yards?

A Mr. Odom.

Q What did Mr. Odom say about the twenty-two yards?

A He said they estimated that the shot him was twenty-two yards or twenty-two feet or whatever it is from him when it hit him.

Q And is that your statement or Mr. Odom's statement?

A Mr. Odom's statement.

Q He wrote it down?

A Yes, sir, he did.

Q And you signed the statement with that in it?

A Yes, sir, I did.

Q Why did you do that again, Bill?

A Because I was scared.

Q The statement goes on to say that, "He fell to his stomach and got up on his hands and knees and started running away from me." Did that happen?

A No, sir.

Q Why is that in the statement, Bill?

A Mr. Odom said that he had been shot more than once and the first shot had to kill him so ---.

Q Tell the jury exactly what Mr. Odom said to you about

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that time, Bill?

A. Mr. Odom said that Mr. Baker had been shot and that the first shot did not kill him and then that he had crawled or walked some distance before being shot again.

Q. And then what did Mr. Odom say to you?

A. He said that it was a matter of feet or something like that when the second shot hit him.

Q. And then did he ask you if that is what happened?

A. Yes, sir, he did.

Q. And what did you tell him?

A. I told him yes.

Q. Why -- was it true?

A. No, sir. It was not.

Q. Why did you tell him that?

A. Because I was scared.

Q. You were afraid of him?

A. Yes, sir, I was.

Q. Who were you afraid of?

A. Bill Findley and Mr. Odom.

Q. Did they have guns on them out there?

A. Yes, sir, they did.

Q. It says that, "I pumped the empty shell out of my gun and shot him again and he fell again." Was that true?

A. No, sir, it was not.

Q. And, again, why did you make such a statement such as

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that if it is not true?

A. Mr. Odom said that it took a third shot.

Q. I am sorry?

A. Mr. Odom said that it took a third shot.

Q. Did you shoot Mr. Baker?

A. No, sir, I did not.

Q. Did you shoot Mr. Baker even one time?

A. No, sir, I did not.

Q. It goes on to say that you shot a third time. Did you shoot a third time?

A. No, sir, I didn't shoot any.

Q. Did you shoot a first or second time?

A. No, sir, I didn't.

Q. It says that, "I layed my gun down in the road," on page eight now I'm referring to. "I layed my gun down in the road and I got him by the feet and was turning him around." Is that true?

A. No, sir, it is not.

Q. It says, "A shoe came off as I was doing this and I dragged him by his feet down the road a little ways and I dragged him out into the woods. I left the body in the woods about six feet from the side of the road." Now, where did you get that measurement of six feet?

A. From Mr. Odom.

Q. Now, what caused him to say six feet? Tell the jury what

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he said, please.

A. He said that the distance from where he had been drug into the woods was exactly six feet.

Q. Exactly six feet?

A. Yes, sir.

Q. And that was his words and his measuring?

A. Yes, sir, it was.

Q. Did you know anything at all of your own personal knowledge about where Mr. Baker was found?

A. No, sir, I did not.

Q. And that was solely at the suggestion of Fred Odom?

A. Yes, sir, it was.

Q. "As I came out of the woods I picked up three shells, empty ones, and picked up Mr. Baker's shoes and billfold, which had fallen out of his pocket." Did that happen?

A. No, sir, it did not.

Q. Did you pick up any shells there?

A. No, sir, I didn't pick up nothing.

Q. And did you pick up shoes?

A. No, sir.

Q. Did you pick up a billfold?

A. No, sir.

Q. Were you even there on September the 3rd?

A. No, sir, I was not.

Q. Bill, would you tell the jury, please, what type of

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terrain that you claimed that you picked up these shotgun shells from? Was it wooded or was it a field or where?

A. It was just a wood and bean field and road.

Q. Was any grass there?

A. Along the edge of the woods there is grass, yes.

Q. All right. And how about the place where they claim you picked up the shells?

A. Yes, sir, I believe there was.

Q. There was grass?

A. I believe so.

Q. Bill, you have been hunting all of your life practically?

A. Yes, sir.

Q. Will you tell the jury whether you have any trouble finding shells or empty ones when you drop them in the grass?

A. You have quite a bit of trouble if the grass is any height at all.

Q. Did the grass have any height at all to it?

A. Some of it was about knee high, I believe.

Q. Your statement goes on to read, "I walked back down to my car, about thirty yards, and put the shoes and the shells and the billfold in the floorboard of my car on the passenger's side." Did that happen?

A. No, sir, it did not.

Q. It says, "I opened the passenger's side door to do this.

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I come back, got my shotgun and picked up Mr. Baker's glasses, which were lying in the road where I had shot the last time." Did you see Mr. Baker's glasses there?

A. No, sir, I didn't.

Q. The statement reads on and says, "I just slung them in the bean field." Did you pick up the glasses and sling them in the bean field?

A. No, sir, I didn't.

Q. And you are saying that statement is not true?

A. Yes, sir, I am.

Q. Did not happen?

A. No, sir, I did not.

Q. The statement reads on to say that, "I took my gun and got in my car and backed the car back to the corner of the field and woods and left. I drove back to Payneway on the west levee." Were you in the floodway on the 3rd of September?

A. No, sir, I was not.

Q. You were not?

A. No, sir.

Q. And that is true?

A. It is true.

Q. The statement, on page 9, reads on to say that, "When I got to highway 63 at Payneway I turned left onto highway 63 and then turned right off of the highway and down be-

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side McCrarey's Restaurant on a gravel road." Did you go in that area on September the 3rd?

A. No, sir, I did not.

Q. Did you go into the area of McCrarey's Cafe on the floodway on any other day about that time?

A. September the 2nd.

Q. September the 2nd, the day before that?

A. Yes, sir.

Q. And did you tell Mr. Odom that you had been there on September the 2nd?

A. Yes, sir, I had.

Q. All right. Tell the jury, please, if you will what Mr. Odom said at the time that you wrote this statement -- the time this statement was written out, what was said by you or Mr. Odom about going on the floodway near McCrarey's Restaurant.

A. He said that must have been where I threw the stuff at. And he asked me to show him where I was at the day that I was down there.

Q. Did he say that or you?

A. No, sir, he did.

Q. And then he wrote down the substance of it?

A. Yes, sir, he did.

Q. Is that the way it happened?

A. Yes, sir, it is.

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Q And that is correct?
A Yes, sir, it is.
Q The statement goes on to say that, "When I got to the first intersection I turned right on another gravel road and drove down to the levee. Then I drove over the levee and got the money out of the billfold before I got to Payneway." Did you get any money at all out of the billfold belonging to Mr. Baker?
A No, sir, I did not.
Q And, again, Bill, tell the jury, please, what was the substance of your conversation with Fred Odom at the time this statement was made regarding the billfold at that time?
A He said that I had got the billfold and the shells and shoes and that I had taken the money out and then threw the stuff into the river over on the floodway.
Q Did you do that?
A No, sir, I did not.
Q And why did you tell -- admit to Mr. Odom that you did something like that?
A Because I was afraid of Mr. Odom and Mr. Pindley.
Q Were they both there at that time?
A Yes, sir, they were.
Q "When I crossed the levee in Payneway, I pulled down to a ditch and threw the billfold and the shoes in the

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water and threw the three shells in the water, too." Did you do that?

A. No, sir, I did not.

Q. And that is not true?

A. No, sir. It is not true.

Q. The statement goes on to show that, "I put the money in the side pocket on my car door. There was a hundred dollar bill, two twenty dollar bills, one ten dollar bill, one five and five ones, making a total of one hundred and sixty dollars." Tell the jury, please, how those figures came about?

A. Mr. Odom said that was how much that Mr. Baker --

Q. (Interposing) I can't hear you.

A. Mr. Odom said that that was the amount of money that Mr. Baker was supposed to have had on him.

Q. Mr. Odom said that?

A. Yes, sir, he did.

Q. All right. What else did he say there?

A. Just that I had got the money and threw the wallet and stuff in the ditch.

Q. Did you get one hundred and sixty dollars or any other amount of money off of Mr. Baker?

A. No, sir, I did not.

Q. Did you have any idea at any time of robbing Mr. Baker?

A. No, sir, I have not.

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Q Did you rob Mr. Baker?
A No, sir, I did not.
Q Did you shoot Mr. Baker?
A No, sir, I did not.
Q The statement goes on to say that, "Then I stopped at the 66 station across from the intersection of highway 63 and 14 and got three dollars' worth of gas and a can of brake fluid." Did that happen?
A Yes, sir, it did.
Q When did it happen?
A September the 2nd.
Q September the 2nd, the day before Mr. Baker was missing?
A Yes, sir.
Q All right. "And that all came to five dollars even," is that correct?
A Yes, sir, it did.
Q All right. It says, "I paid the man with a five dollars. It was a five dollar bill that I had gotten from Mr. Baker's billfold." Did you get that five dollars from Mr. Baker's billfold?
A No, sir, I did not.
Q Where did you get it?
A From my wife.
Q From your wife?
A Yes, sir,

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Q Now, why did you -- again, why did you make a statement like that -- sign a statement like that?

A Mr. Odom said that the five dollars that I had spent for gas and stuff had come out of the one hundred and sixty that I was supposed to have taken.

Q And that statement was still made there in the bean field or out in the floodway?

A Yes, sir, it was.

Q The statement goes on to read, "I went straight home from there to my trailer at Slinkard's Trailer Park. I don't remember what time I got there but I cleaned up my shotgun that evening after I got to my trailer." Is that true?

A Sir?

Q Did you -- did you -- is the statement true that you left the floodway on September the 3rd and went to your home?

A No, sir.

Q All right, sir. The statement goes on to read, "The one hundred dollar bill that I got out of Mr. Baker's billfold was the one that I gave to John Paul Noble to cash for me. He cashed it at the A & G Supermarket in Trumann on Thursday night, September the 4th, 1975." Did you have a hundred dollar bill?

A Yes, sir, I did.

Q Where did you get the one hundred dollar bill?

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A Some of it was from selling dogs and some of it was from some checks that I had wrote.

Q All right, now how did you happen to have it into a one one hundred dollar bill?

A Because I went to the bank and I got it.

Q All right. And when did you do that?

A I believe it was the same day, I am not for sure, the same day that it was cashed.

Q Same day that it was cashed --

A (Interposing) Yes, sir, I believe that it was.

Q -- the statement reads, "September the 4th," is that correct?

A I believe it was on a Friday.

Q Bill, what was your purpose in to putting the money into a hundred dollar bill?

A To hide it better.

Q To hide it from whom?

A From my wife.

Q From your wife?

A Yes, sir.

Q Do you try to keep a little mad money on you?

A Yes, sir, I do.

Q And did you have any specific purpose of setting back a hundred dollar bill?

A Yes, sir, I did.

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Q What was your purpose?
A To go to Ripley, Mississippi, for the dog day down there.
Q For the dog day?
A Yes, sir. It is an annual meeting they have down there the first Monday of every month. You can buy and sell and trade dogs.
Q What kind of dogs do they have down there?
A Coon dogs.
Q Coon dogs?
A Yes, sir.
Q How long have you been dealing in coon dogs?
A Three years.
Q How long have you been hunting coons?
A Five or six years.
Q Do you hunt fairly regular,Bill?
A I did.
Q And did you get to go to the coon -- what did you call it? I am sorry.
A Well, it is just a dog day is what they call it.
Q Did you get to go to the dog day?
A No, sir, I didn't.
Q And when did you realize that you weren't going to be able to go to the dog day?
A Saturday before it was supposed to take place on Monday.
Q And will you tell the jury, please, why you didn't get

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to go?

A. Because my truck was tore up.

Q. Were you going to go in your truck?

A. Yes, sir, I was.

Q. And you had to call off your trip then?

A. Yes, sir, I did.

Q. The statement goes on to say that, "The shotgun that I gave to the police on September the 7th at my trailer is the one that I used to kill Mr. Baker with." Did you kill Mr. BAker with that gun or any other gun, Bill?

A. No, sir, I did not.

Q. Did you shoot Mr. Baker?

A. No, sir.

Q. Bill, why did you consent to sign a statement with that remark in it?

A. Mr. Odom had said that that was the gun that I had used. He said that they had a report it was the one that killed Mr. Baker.

Q. Again, is this all in Mr. Odom's handwriting?

A. Yes, sir, it is.

Q. And it was taken out in the floodway?

A. Yes, sir, it was.

Q. It says, "That is the only gun that I have got. It is not mine. It belongs to my brother, Floyd Inzer, who lives in Jonesboro." Is that correct, the gun belongs to

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your brother?

A. Yes, sir, it is.

Q. "The only other person that I have talked to about me killing the man was my doctor over at Memphis. Her name is Fisher. Her aide's name is Don something." Is there any truth to that?

A. Yes, sir. I asked her if she thought if I was capable of killing someone since they had called. I say they, I don't know which department called and had it put on report over there that I was under the suspicion of murder in Poinsett County, which erupted the whole hospital. And so I asked her if I was capable of doing it.

Q. And what hospital was this?

A. It was in the Veteran's Hospital in Memphis.

Q. The Veteran's in Memphis?

A. Yes, sir.

Q. And at that time had you learned that you were under suspicion?

A. Yes, sir.

Q. Bill, do you recall an incident when your wife's dog was sick or injured and had to be put to sleep?

A. Yes, sir, I do.

Q. When did that happen?

A. I can't recall.

Q. Was it -- where was it with reference to the date when

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Mr. Baker was missing?

A. What do you mean?

Q. I mean was it a month before that or a year before that or when?

A. About a month, I would say.

Q. About a month. And did you try to kill the dog?

A. Me?

Q. Yes.

A. No, sir, because I couldn't.

MR. EVERETT: Judge, I object to this. It is all irrelevant to killing a dog. I don't see that it has anything to do --

THE COURT: The objection will be sustained.

MR. DABNEY: If the Court please, I would object to the Court's ruling on that.

[REPORTER'S NOTE: The following occurred at the bench out of the hearing of the jury:

MR. DABNEY: If the witness had been permitted to testify that he would have testified that he was not able to kill the dog and that the dog had to be killed by the defendant's father.]

BACK IN THE HEARING OF THE JURY:

Q. (By Mr. DAbney) Now, this statement begins with, "All of this statement is true and correct to the best of my knowledge. I make this statement without threats or

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ing reported this case extensively at the time of its occurrence. So the defense could hardly be surprised by any knowledge that these witnesses might have. And they being called for the purpose of rebuttal, the necessity of that rebuttal having developed during the cross examination of the defendant, the objection will be overruled.

MR. DABNEY: Note our exceptions, if the Court please and we would like to let the record show that their testimony is limited only to the fact that a statement was made rather than for general examination.

THE COURT: I don't know what they are called for. I assume that the defendant made certain statements against his interest in their presence at some time. You may reserve any objections, of course. They are called as rebuttal witnesses and they may be permitted to rebut anything that was brought out or denied or to explain.

Call the jury back in the box.

[The trial continued at 4:15 P.M.]

oOo

LARRY FUGATE,

being called as a witness at the instance of the State, having been duly sworn, testified as follows, to-wit:

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DIRECT EXAMINATION

BY MR. BURNETT:

Q Will you state your name, please, for the record?

A Larry Fugate.

Q And what is your occupation?

A I am associate editor of the Jonesboro Sun in Jonesboro.

Q Mr. Fugate, you were just sworn by the Court I believe?

A Yes, sir.

Q All right. Mr. Fugate, directing your attention to sometime around the 10th of October of 1975, in your capacity as a news reporter for the Jonesboro Sun, did you have an occasion around that date -- and you can specify when it was -- to be present at a ditch bank in the floodway area in Poinsett County and observe a search by officers of the Poinsett County sheriff's office and others?

A I did, sir, on the morning and afternoon of October the 11th, 1975.

Q And what was the nature of that search?

A The officers, accompanied by the defendant --

Q (Interposing) Are you speaking of the defendant here, Billy Woodard, by Mr. Dabney?

A That is correct. The officers and Mr. Woodard went to a location approximately one mile east, northeast of Payneway in Poinsett County, and a number of the officers

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Shariff Crawford, Deputy Doyle Millis, Deputy Billy Reese, former Deputy Jim Walker, one other deputy, I don't know his name, and later a Lieutenant from the Trumann Police Department, Bobby New, entered into the water of this ditch and conducted a search.

Q And where was the defendant at this time?

A At the time that they were in the water?

Q They were in the water?

A The defendant was sitting on the north bank of the cut end of this levee ditch.

Q All right. Was he directing the efforts of the officers in the water?

MR. DABNEY: If Your Honor please, I am going to -- will you ask him to rephrase that question?

Q (By Mr. Burnett) I will just state it like this, Mr. Fugate. Did you have a conversation with Mr. Billy Woodard, the defendant?

A I don't know whether I would clarify it as a discussion. I had several exchanges, briefly or sporadically over a period of several hours there.

Q All right. Tell me if you will then what you saw the defendant do at that scene and what he said to you.

A Well, he -- actually, I need to back up a little bit. I developed some information from a confidential source the evening of October 10, 1975, and as a result of that

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information, I went to the county jail in Harrisburg on the morning of October the 11th. I followed Sheriff Crawford and the defendant when they left the County jail and proceeded to Payneway, other deputies joining at a cafe and a motel, I think it is called either McCrarey's or McClartey's Motel. I was accompanied by Paul Holmes from Jonesboro, who is a reporter for KAIT-TV. The police car stopped on a levee about a mile east, northeast of Payneway and the officers and Mr. Holmes and myself followed the defendant down to what I call a cut in this bank. Apparently stock use it for feeding because there was evidence that cattle had been down there. The defendant discussed something with Sheriff Crawford that I could not hear or understand. And then he told Sheriff Crawford, in my presence, that he threw a billfold, a pair of shoes, and three expended shotgun shells into the water, which was identified to me as a side ditch of the river. As a direct result of the defendant's instructions Officers entered the water and searched the water for a period of two to three hours while we were there.

Q Your purpose of being there was to obtain information to report in news?

A Yes, sir.

Q Go ahead and tell what the defendant's conversation -- if

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any that you had with the defendant.

A. I approached the defendant at one point while the officers were in the water and tried to strike up a conversation with him and he didn't seem to want to talk with me so I just let it drop. At a later point, I approached him, when I say approached him, most of the time we were not separated by more than ten or twenty feet. He was sitging on the north side of the bank cut. I talked to him briefly. I think we talked about the weather or something. It was warm and the mosquitoes were bothering us. He indicated to me that he had a headache and wanted to know if either I or anyone else had any aspirin. I obtained the keys to the car from Deputy Walker's car and checked the first-aid kit in the trunk. There were no aspirins in it. I either asked -- I think I asked Doyle Hillis, who was going back to Payneway, to obtain a dip net to stop and see if he could get some aspirin for the defendant. Doyle brought some back in a -- wrapped in a paper napkin, maybe eight or ten. I gave the defendant several aspirin and he consumed them. I gave him the rest of the aspirin wrapped in the napkin. He stuck them in his shirt pocket. A short time later, I asked the defendant how many times Mr. BAker was shot. He said three times. I asked him what type of weapon was used and he said a twelve gauge pump shotgun. The defendant --

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Q (Interposing) That was the defendant telling you this?

A Yes, sir. The defendant at no time told me directly that he shot Mr. Baker. I asked him about the billfold of Mr. Baker, I believe he said it was black. He said that after he threw the shotgun shells and the shoes and the billfold into the water, he went up on a little hill or clump up north of the cut and slightly west of it and sat there for a while saying something to the effect of what have I done.

Q He was telling you this?

A Yes, sir. And at a later point the defendant asked me if I thought he was mentally unbalanced. And that, again, in substance is the conversation or exchange or whatever you might call it occurred over a period of at least an hour. It was sporadic or broken. I might ask him a question and he might respond and he might not make any other comments to me or I might not direct any to him for thirty minutes.

Q Mr. Fugate, there was no one there treating him harshly? No one there threatening him and he volunteered this conversation to you, a complete stranger; what have I done? Three shots of a shotgun and a black billfold?

A I won't say he volunteered it. He, of course, was at first reluctant to talk to me at all and the rest of the time he was just -- at best reluctant.

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MR. DABNEY: If Your Honor please, I object to leading.

THE COURT: Avoid leading.

Q (By Mr. Burnett) After you started talking to him, did he talk to anybody that came up or around?

A Yes, sir, he talked to Jim Walker.

Q Did he tell him any details about this crime?

A Jim Walker? I don't honestly remember what he said to Jim. They were talking for some time. Part of the time they were a distance away from me.

oOo

CROSS EXAMINATION

BY MR. DABNEY:

Q Larry, you weren't there for an interview with Billy Woodard and he didn't propose to give you one, did he? You were there to gather what news you could, of course?

A That is correct, sir.

Q Most of the information that you got from Billy Woodard was overhearing remarks that he made to Sheriff Crawford or Deputy Walker except to those instances that you told us about?

A That would be correct, sir.

MR. DABNEY: I believe that is all.

THE COURT: You may stand down. Call your next.

MR. BURNETT: Call Bill Findley.

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A He hadn't got there yet.

Q All right. And you followed him, of course, to take his wife to work, did you not?

A Yes, sir.

MR. BURNETT: Your Honor, I am going to object to repetition now.

THE COURT: Avoid repetition.

Q (By Mr. Dabney) Then he did come over to the Sheriff's office then?

A Yes, sir.

Q When he got to the Sheriff's office, you escorted him into the Sheriff's office and told him to wait, didn't you?

A Yes, I did.

Q And prior to that time you told him that you wanted to talk to him about a warrant for some trophies, didn't you?

A Not a warrant. It hadn't been issued.

Q All right. The charges about the trophies you wanted to talk about?

A I wanted to take a statement in reference to the trophies.

Q Take a statement in reference to the trophies? That is what you told him that you wanted to talk to him about at the Sheriff's office?

A That is what I did.

Q All right, sir. And when you got to the Sheriff's office

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Woodard one by one, didn't he?

A. Yes, he did.

Q. And at the time that he was showing the pictures to him, he told him that he had committed this crime and why didn't he go ahead and admit it, didn't he?

A. No, sir.

Q. All right. And you were down there for a period of how long? Got there about 1:18, when did you leave there?

A. We left the floodway at approximately 5:10 P.M.

Q. Got there at 1:18 P.M. and were out at the floodway until 5:10 P.M. All right, sir. And Billy Woodard was subjected to a tremendous emotional strain to say the least, wasn't he, being shown the pictures?

A. He didn't show that much emotion at that time.

Q. Bill, the purpose of going down there with Mr. Odom and with Billy Woodard was to get a statement from him or a confession from him actually, wasn't it?

A. A statement from him.

Q. A statement incriminating himself?

A. Clearing himself or incriminating himself, either one. He falsied one statement and it would help him just as much as it would hurt him.

Q. And you felt it was necessary to take him down where the body was found for that?

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A I felt it was, yes, sir.

Q Felt that it was helpful, didn't you?

A Yes, sir.

Q In fact you went down there for the express purpose of getting a statement, didn't you?

A To get a statement, yes, sir.

Q And you would have stayed down there until you did get a statement, wouldn't you, Bill?

A It depends on how long it would have took.

Q All night you would have stayed if you thought that you would get a statement, wouldn't you?

A I have worked all night trying --

Q (Interposing) Bill, you have been working on this case from the date of the death, September the 3rd, -- it was reported on the 6th, I believe -- the 6th, when the body was found, of September and then went down there on October the 10th, is that correct?

A Yes, sir.

Q And you had been working constantly on this case for a period of approximately five weeks, hadn't you?

A Yes, sir.

Q And Billy Woodard was the only lead you had left, wasn't he?

A Yes, he was.

Q And you were determined to get a statement from him?

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A Yes, sir.

Q All right.

oOo

REDIRECT EXAMINATION

BY MR. EVERETT:

Q Mr. Findley, I ask you again, did anybody coerce him?

A No, sir.

Q Did anybody hit him?

A They did not.

Q Were there any threats made to him?

A There was not.

Q The statement he made was voluntary?

A Yes, sir.

MR. EVERETT: That is all.

THE COURT: You may stand down. Do you have anything further?

MR. EVERETT: The State rests, Your Honor.

THE COURT: Does the defense have anything further to offer at this time? Do you have anything in rebuttal?

MR. DABNEY: Your Honor, the defense rests.

THE COURT: Ladies and gentlemen, it is now ten minutes until five. We first have to have a conference to go over with counsel the instructions that will be given by the Court to you and then

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argument of counsel. And I, for one, would not attempt to estimate how long these gentlemen would want to talk about the case before it is finally submitted to you. I am going to permit you to remain in recess until Monday morning. As I indicated to you earlier, we would not have any Court Friday because of a prior case at Greene County. I would admonish you very strongly, do not attempt to discuss the case among yourselves. You should not discuss the case with anyone else or permit anyone else to discuss the case with you or in your presence. You should not attempt to make any independent investigation or inquiry into this case; you should not read any newspaper articles or listen to any television or radio accounts of the case. Should anyone attempt to talk to you about the case or to influence you as a juror, you should report that fact to the Court. You should not attempt to make up your mind or to form or express any opinions until the case has been finally submitted to you for your verdict. You may stand in recess until 9:30 Monday morning.

[Jury released at 4:52 P.M.]

OUT OF THE PRESENCE OF THE JURY FOLLOWING JURY RELEASE:

MR. DARNEY: At this time the defendant moves that

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things. One is that Mr. Dabney waived venue when he began the trial; two the statement of the defendant places the murder scene well within Poinsett County; and three the body was recovered in Poinsett County.

THE COURT: The motion will be denied.

MR. DABNEY: Exceptions to both motions, please.

[Adjournment.]

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Monday, March 8, 1976; 9:30 A.M.

THE COURT: Ladies and gentlemen of the jury, as I reported to you earlier this morning, Mrs. Aites is ill this morning. We have been unable to determine from her doctor exactly when he feels like she will be able to resume her jury service. There is every indication at this time that she will be able to resume. So it will be necessary that we permit you to stand in recess until such time as we are able to conclude the case. I am going to ask you before you leave to leave your name and your home telephone or your business or office number so that the clerk's office can contact you in the afternoon or evening to advise you each day whether or not it will be necessary for you to report for jury service at 9:30 the next morning. There is a

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good possibility that she will be able to resume in the morning. If so, then sometime this afternoon or evening the clerk or the Sheriff's office will call you and advise you that it will be necessary for you to report back for jury service at 9:30 in the morning, or if not in the morning, then some day, hopefully, one day this week. We will remain in recess for a reasonable period of time to allow and to permit her to fully recuperate. With the usual admonition not to discuss the case among yourselves nor permit anyone to discuss the case with you or in your presence, you should not attempt to make up your mind or to form or express any opinion until the case has been finally submitted to you for your verdict. Again, you should not read any newspaper articles or listen to or view any television or radio reports concerning the case that is under trial. I will permit you to stand in recess until you are recalled. And you will be free to leave as soon as you give your number and name to the clerk. You will not be required to sit on any other jury until this case has been resolved one way or the other. With that explanation, you may stand in recess. You are welcome to stay or free to leave.

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Thursday, March 11, 1976, 9:30 A.M.

THE COURT: Court will be in session.

MR. DABNEY: Your Honor, may I approach the bench?

THE COURT: It will be permitted.

[The following occurred out of the hearing of the jury at the bench:

MR. DABNEY: At this time the defendant would move for a mistrial in this cause for the reason that court recessed on Thursday, March 4, and this case was continued until Thursday, March 11. This is an unreasonable delay in the trial of this cause and the defendant would move for a mistrial for the reason that this delay may tend to prejudice the jury against him and prevent him from getting a fair trial.

THE COURT: The motion will be denied.]

BACK IN THE HEARING OF THE JURY:

THE COURT: Are all parties ready to proceed?

MR. BURCHETT: Yes, Your Honor.

MR. DABNEY: The defendant is ready, Your Honor.

THE COURT: Ladies and gentlemen, the court at this time will you give you the instructions of the law applicable to the case on trial. The attorneys will no doubt desire to refer to the instructions from time to time during their closing arguments and a

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part one, which is A, B, C. and D?

JUROR KNIGHT: Right.

THE COURT: Are you down to part two, A and B?

JUROR KNIGHT: Right.

THE COURT: And you cannot agree as between A and B?

JUROR KNIGHT: Yes, sir.

THE COURT: How are you numerically divided on that question?

JUROR KNIGHT: Seven and five.

THE COURT: Ladies and gentlemen, it is now only twenty minutes until four. YOu have not been deliberating over a very long period of time. Without further instructions, I am going to require you to retire and deliberate and see if you cannot reconcile your differences by further deliberations and discussion among yourselves permitting everyone to be heard, to express their views and their opinions. Those opinions should prevail which appear most reasonable, logical, and sound.

You may now retire and deliberate and if you are unable after a reasonable period of time, notify the bailiff.

[Jury retired at 3:43 P.M. and returned at 3:56 P.M.]

THE COURT: Mr. Foreman and ladies and gentlemen, have you arrived at a verdict?

APPENDIX D

AFFIDAVIT

I, Doyle Hillis, having been duly sworn according to law, do hereby state under oath:

I was the chief criminal investigator for Poinsett County, Arkansas, at the time that the Baker murder occurred. Shortly after the murder occurred, suspicion developed that Billy Woodard may have been involved in the murder. This suspicion was based upon the fact that Woodard had been seen with Baker on the day he disappeared.

On two occasions I spoke with Woodard about his possibly being involved in this murder. These conversations were had because of the suspicion that he might be involved. After these conversations there was still a suspicion that he was involved, but no arrest warrant was issued. I did not think that we had probable cause for arrest at that time.

A few days after the last contact I had with Woodard, two other law enforcement officers went to question him. They did not have an arrest warrant. After their discussions there was a confession. Based upon this confession we obtained the probable cause for an arrest warrant.

This incident occurred several years ago. I am stating that this is what happened to the best of my knowledge, belief and memory.

Doyle Hillis
DOYLE HILLIS

STATE OF ARKANSAS)
)
COUNTY OF POINSETT)

Subscribed and sworn to before me this 27 day of May, 1981.

[illegible]
NOTARY PUBLIC

My commission expires: 11-1-83

APPENDIX E

IN THE CIRCUIT COURT OF POINSETT COUNTY, ARKANSAS

CRIMINAL DIVISION

THE STATE OF ARKANSAS	:	
PLAINTIFF	:	
VS.	:	CASE NO. CR-71-101
BILLY JOE WOODARD	:	
DEFENDANT	:	

March 2, 1976
Poinsett County Courthouse
Harrisburg, Arkansas

B e f o r e — HONORABLE GERALD PEARSON
Circuit Court Judge

TRANSCRIPT OF
JURY VOIR DIRE

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IN THE CIRCUIT COURT OF POINSETT COUNTY, ARKANSAS

CRIMINAL DIVISION

THE STATE OF ARKANSAS	:	
PLAINTIFF	:	
VS.	:	CASE NO. CR-71-101
BILLY JOE WOODARD	:	
DEFENDANT	:	

March 2, 1976
Poinsett County Courthouse
Harrisburg, Arkansas

Before — HONORABLE GERALD PEARSON
Circuit Court Judge

APPEARANCES

MR. DAVID BURNETT
Prosecuting Attorney
#4 Professional Building
Osceola, Arkansas 72370

and

MR. MICHAEL EVERETT
Deputy Prosecuting Attorney
P. O. Box 574
Marked Tree, Arkansas 72365

Appearing for the Plaintiff

MR. BURTON M. DABNEY, JR.
Attorney at Law
P. O. Box 369
Marked Tree, Arkansas 72365

Appearing for the Defendant

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THE COURT: When your name is called, if you would, please come and have a seat in the jury box commencing on the second row in the back seat and have a seat in the order in which your names are called, if you would, please.

CLERK: Robert Bonham, Ted Goad, Lloyd Raney, Bertha McGowan, Alfred Campbell, Carmen L. Carpenter, Vickie Hobbs, Clyde Gray, O. W. Willoughby, Edward Redd, H. P. Maddox, Jr., Ray Knight.

THE COURT: Ladies and gentlemen, the case coming on for trial at this time on the criminal docket for the Circuit Court of Poinsett County is Case Number CR-75-101, styled the State of Arkansas against Billy Woodard.

The State of Arkansas is represented by Mr. David Burnett of Osceola, the duly elected prosecuting attorney for the Second Judicial Circuit of Arkansas, and by Mr. Mike Everett, the deputy prosecuting attorney who practices law at Marked Tree, Arkansas.

The defendant is Billy Woodard, Mr. Woodard, would you stand up momentarily, please, sir?

[REPORTER'S NOTE: Defendant stands.]

THE COURT: You may have a seat.

Mr. Woodard is represented by Mr. Burk Dabney, attorney, of Marked Tree, Arkansas.

BY THE COURT:

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Q Are any of you related to either of the attorneys in this case? I take it that none of you are. Are any of you presently represented in any legal or business matter by any of the attorneys in this case or have you been within the recent past?

JUROR HOBBS: I am a legal secretary. I work for Mitchell Moore and we have dealings with all of the attorneys.

Q Is there anything in that association or because of your business relationship there which would tend to bias or prejudice you one way or the other as to any one attorney over another?

JUROR HOBBS: It could. I really don't know. I feel like I might be.

Q Mrs. Hobbs, if you are selected as a juror in the trial of this case your oath -- I assume you do recognize and understand the solemnity, the sacredness or the importance of an oath, do you not?

JUROR HOBBS: Yes, sir.

Q If you are selected as a juror in the trial of this case your oath will require and compel you to lay aside any personal knowledge or acquaintanceship with any of the attorneys involved in this case or any of the parties and try the case solely and only upon the law and the evidence you hear produced during the trial of this case.

If selected, can you and will you uphold and abide by

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your oath?

JUROR HOBBS: Yes, I guess I would.

Q You would not be deliberately trying to avoid your duty as a juror, would you?

JUROR HOBBS: No, sir.

Q That is all that is required of you, that you base your verdict solely and only upon the law and the evidence you hear during the trial of the case. You can and will do that I take it?

JUROR HOBBS: Yes, sir.

Q I take it that none of you are presently or have been represented by either of the attorneys within the recent past?

Are either of you related to the defendant, Billy Woodard, either by blood or marriage? I take it that none of you are.

I believe Mr. Woodard's wife's name is Lena Woodard. Are any of you related to Mrs. Woodard, either by blood or marriage, to your knowledge?

I believe they make their home at Bay, Arkansas, in Craighead County at the present time. Are any of you personally well acquainted with the defendant, Billy Woodard, or with his wife, Lena Woodard, or with the parents or family of Billy Woodard who make their home in Bay, Craighead County, Arkansas?

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JUROR KNIGHT: Billy Woodard worked for me for about two and one-half years ago.

Q In what capacity?

JUROR KNIGHT: At Singer Company in Trumann.

Q How long did he work for you, Mr. Knight?

JUROR KNIGHT: Oh, probably a couple or three months. I don't know exactly.

Q And that has been about two and a half years ago, did I understand you to say?

JUROR KNIGHT: Somewhere in that neighborhood.

Q That was long before the incident giving rise to these criminal charges?

JUROR KNIGHT: Yes.

Q Have you had occasion because of that knowledge to talk with the defendant or any member of his family about the case itself?

JUROR KNIGHT: Haven't seen them.

Q Is there anything in your acquaintanceship or relationship as employer or supervisor and employee which you feel might tend to bias or prejudice you one way or the other in the trial of the case?

JUROR KNIGHT: I don't think so, no, sir.

Q You could and would if selected and sworn as a juror for the trial of this case lay aside any knowledge or acquaintance and not permit that acquaintanceship to color

or influence your verdict one way or the other? Could you do that?

JUROR KNIGHT: I believe so.

Q And I take it none of the rest of you have any personal knowledge or acquaintance of the defendant, Billy Woodard, his wife or any member of his family?

There will be a number of witnesses called by either the prosecution or the State during the trial of this case. Among those who may be called would be the sheriff of your county, Mr. Crawford, Mr. Fred Odom, a criminal investigator for the Arkansas State Police, possibly Jimmy Walker, who at one time was chief deputy sheriff of Poinsett County, Arkansas, possibly Mr. Bill Findley, a deputy sheriff of Craighead County, Arkansas.

Of those witnesses that I have called, and possibly Mrs. Baker, Mrs. Audrey Baker, are any of you related to or personally well acquainted with any of the prospective witnesses that may be called during the trial of this case by either of the parties?

JUROR REDD: Your Honor, I do business with a witness.

Q Which witness would that be?

JUROR REDD: Mr. Jones.

Q Mr. Jones?

JUROR REDD: Yes.

THE COURT: Will Mr. Jones be a witness?

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MR. EVERETT: Yes, sir.

BY THE COURT:

Q And, sir, is that business relationship continuing at the present time?

JUROR REDD: Yes, sir.

Q Is there anything in that relationship which you feel might cause you to give more or less weight or credibility to the testimony of Mr. Jones than if he were a total and complete stranger to you?

JUROR REDD: No, sir, I don't think so.

Q Could you and would you under your oath as a juror if selected lay aside any personal knowledge or acquaintanceship with a witness and weigh his testimony and what weight and credibility you would give to his testimony by the same rules and the same laws and weigh the credibility of every other witness who might testify in the trial?

JUROR REDD: Yes, Your Honor.

Q Are there any others of you related to or personally well acquainted or have any business relationship with any of the witnesses who may be called?

For the benefit of the parties in this case and of the attorneys I am going to ask each of you a few individual questions not with any intention of embarrassing you but to reveal certain information which would help the parties and attorneys locate and identify you as prospective jurors.

Mr. Bonham, where is your residence, please, sir?

JUROR BONHAM: Harrisburg.

Q What is your occupation or business?

JUROR BONHAM: Farming.

Q And your age, sir?

JUROR BONHAM: Forty-two.

Q Have you ever served on a jury previous to this?

JUROR BONHAM: No, sir, not exactly like this. At one time I was picked to inspect the jail, such as that, on the grand jury.

Q And, Mr. Goad, I believe, sir; where is your home, sir?

JUROR GOAD: Harrisburg, Route 2.

Q And what is your occupation or business, sir?

JUROR GOAD: Day laborer.

Q And your age, sir?

JUROR GOAD: Sixty-nine.

Q And have you ever served on a jury prior to this cause?

JUROR GOAD: No, sir.

Q And, Mr. Raney, I believe it is, sir?

JUROR RANEY: Yes, sir.

Q Where is your home, sir?

JUROR RANEY: Trumann, Burnes Drive.

Q And what is your business or occupation?

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JUROR RANEY: Self-employed.

Q What is the nature of your business?

JUROR RANEY: Automobile business.

Q And your age, please?

JUROR RANEY: Thirty.

Q Have you ever had prior jury service?

JUROR RANEY: No, sir.

Q And, Miss McGowan, I believe. Where is your home, please, ma'am?

JUROR MCGOWAN: Route 3, 149 Third Street, Trumann.

Q And your husband's name?

JUROR MCGOWAN: I am single.

Q And you are over twenty-one and under sixty-five?

JUROR MCGOWAN: Barely.

Q I learned a long time ago never to ask a woman their age. If any of these lawyers are insistent, then they may ask.

JUROR MCGOWAN: Do you want to know?

Q No. Have you ever served on a jury prior to this cause?

JUROR MCGOWAN: No, sir.

Q And did I ask you what your business was or occupation?

JUROR MCGOWAN: No. I am a school teacher.

Q A school teacher.

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And, Mr. Campbell, where is your home, sir?

JUROR CAMPBELL: Harrisburg, Route 3, Box 9.

Q. And what is your business or occupation, sir?

JUROR CAMPBELL: I am a mechanic.

Q. Mechanic?

JUROR CAMPBELL: Yes, sir.

Q. Are you self-employed?

JUROR CAMPBELL: No, sir.

Q. For whom do you work?

JUROR CAMPBELL: Donald Fortner.

Q. And your age, Mr. Campbell?

JUROR CAMPBELL: Fifty-two.

Q. And have you ever had prior jury service?

JUROR CAMPBELL: Yes, sir.

Q. Was that in this county?

JUROR CAMPBELL: Yes, sir.

Q. How long ago approximately?

JUROR CAMPBELL: Oh, approximately five or six years, something like that.

Q. Do you recall if that was a civil or criminal term of court?

JUROR CAMPBELL: It was a civil court.

Q. Is that Miss or Mrs. Carpenter?

JUROR CARPENTER: Mrs. Carpenter.

Q. Mrs. Carpenter, where is your home, please?

JUROR CARPENTER: Waldenburg.

Q Are you employed?

JUROR CARPENTER: No, I am a housewife.

Q And your husband's name?

JUROR CARPENTER: Malcomb Carpenter.

Q And what is his business or occupation?

JUROR CARPENTER: Farming.

Q Have you ever had prior jury service?

JUROR CARPENTER: No, sir.

Q And is that Miss or Mrs. Hobbs?

JUROR HOBBS: Mrs.

Q And, Mrs. Hobbs, where is your home, please?

JUROR HOBBS: 526 Elm Street, Lepanto.

Q And your husband's name?

JUROR HOBBS: Danny Hobbs.

Q What is his business or occupation?

JUROR HOBBS: Construction.

Q And are you employed?

JUROR HOBBS: Yes, sir.

Q What is the nature of your employment? I believe you indicated a legal secretary for Mr. Moore?

JUROR HOBBS: Yes, sir.

Q Have you ever had prior jury service?

JUROR HOBBS: No.

Q And, Mr. Gray, where is your home?

JUROR GRAY: Marked Tree.

Q And your age, please, sir.

JUROR GRAY: Fifty-two.

Q What is the nature of your business or occupation?

JUROR GRAY: Farming.

Q Have you ever had prior jury service?

JUROR GRAY: Well, I was up here about three years ago but it wasn't on a jury like this, it was ---.

Q Was it grand jury service?

JUROR GRAY: Yes, sir.

Q You inspected county property?

JUROR GRAY: No, it wasn't on -- I was on one jury duty three or four years ago one time.

Q Was that a civil or a criminal trial if you recall, or did you actually sit in the trial?

JUROR GRAY: I sat in one.

Q Was that a civil or criminal trial?

JUROR GRAY: It was civil.

Q And, Mr. Willoughby, where is your home, please, sir?

JUROR WILLOUGHBY: Tyronza.

Q What is the nature of your business or occupation?

JUROR WILLOUGHBY: Truck driver for Marked Tree Co-Op at Marked Tree.

Q And your age, please, sir?

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JUROR WILLOUGHBY: Sixty.

Q And have you ever had prior jury service?

JUROR WILLOUGHBY: Well, not recently. It has been some years ago.

Q On the last occasion, was that civil or criminal?

JUROR WILLOUGHBY: Civil.

Q And, Mr. Redd?

JUROR REDD: Yes.

Q Where is your home, Mr. Redd?

JUROR REDD: Harrisburg.

Q And what is the nature of your business or occupation?

JUROR REDD: Salesman of farm equipment, International Harvester.

Q And your age please?

JUROR REDD: Fifty.

Q Have you ever had prior jury service?

JUROR REDD: No.

Q And, Mr. Haddox, where is your home, please, sir?

JUROR HADDOX: Harrisburg.

Q What is the nature of your business or occupation?

JUROR HADDOX: Farmer.

Q Have you ever had prior jury service?

JUROR HADDOX: Yes, sir.

Q How long has that been since the last time?

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JUROR MADDOX: Five years approximately.

Q Was that a civil case or a criminal case?

JUROR MADDOX: Criminal.

Q Did you actually sit in the trial of any criminal cases?

JUROR MADDOX: Yes, sir.

Q What were the charges in the case that you sat upon?

JUROR MADDOX: Rape, I believe.

Q Was there an acquittal or a conviction? Was the verdict guilty or not guilty if you recall?

JUROR MADDOX: I am not sure. I don't remember.

Q Mr. Maddox, how old were you?

JUROR MADDOX: Fifty-eight.

Q I might advise you now that I have asked you all of this that you have a right to claim the Fifth Amendment if you don't want to give your age.

Where is your home, Mr. Knight?

JUROR KNIGHT: Trumann.

Q And the nature of your business?

JUROR KNIGHT: Singer plant.

Q Have you ever had prior jury service?

JUROR KNIGHT: Yes, sir.

Q How long ago was the last time if you recall?

JUROR KNIGHT: Two years ago, I believe, something like

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that.

Q Was that civil or criminal?

JUROR KNIGHT: Civil.

Q Have you ever sat as a juror in a criminal term of court?

JUROR KNIGHT: No, sir.

Q Ladies and gentlemen, the defendant in this case, Billy Woodard, is charged with having committed the crime of capital felony murder, it being alleged, and the information in this case you are told is a mere formal charge or accusation and is not any evidence of the defendant's guilt but it is alleged that on or about September 3rd, 1975, that the defendant did willfully, deliberately, maliciously and with premeditation and deliberation shoot, kill and murder one C. M. Baker with a twelve gauge shotgun, the killing being in the perpetration of a robbery. These alleged events giving rise to this charge are alleged to have occurred on or about September 3rd, 1975, in the floodway area of your county, I believe approximately six miles south of the Payneway community.

Mr. C. M. Baker, the deceased, was at the time of his death a resident of Route 9, Jonesboro, Arkansas. And his wife is Audrey Baker.

Are any of you or were any of you related to or acquainted with Mr. C. M. Baker of Craighead County or with his

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wife, Audrey Baker? I take it that none of you are.

Do any of you have any personal knowledge, that is from your own observations of the events giving rise to the criminal charge in this case? I take it that none of you have.

Do any of you have any information or knowledge of the case from talking with someone who purported to be an actual firsthand witness or an eye witness to the events giving rise to this charge? I take it that none of you do.

I believe there have been some newspaper articles, television news accounts of the event back at the time of its occurrence and for some period of days or weeks, possibly, after the September 3rd date. Do any of you recall having read anything, or any accounts of the events, either from the newspaper or observed on the television or over the radio?

JUROR HOBBS: I read the newspaper.

Q Are there any of the rest of you that recall reading or hearing something about the events?

JUROR BONHAM: I'm sure I read something about it.

Q Let me ask you individually then beginning with Mr. Bonham on the back row.

Mr. Bonham, you say that you possibly recall having read something of the event back at the time in the newspaper, radio or television?

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JUROR BONHAM: Yes, sir. I don't remember any of it. I do remember just reading about it. I don't recall what.

Q. From what you may have read or heard or heard discussed in the community, did you form any impressions or opinions as to what happened or as to the guilt or innocence of the one accused or charged with that crime?

JUROR BONHAM: Well, I wouldn't want to comment. In other words, it has been some time ago and I just don't remember. I wouldn't comment.

Q. I take it you have no opinion as of the present time as to what happened or as to the guilt or the innocence of the defendant?

JUROR BONHAM: That is right, sir.

Q. Mr. Goad, do you recall having read anything about the matter or having heard it discussed or anything?

JUROR GOAD: No, sir.

Q. May I ask you then, sir, at the present time as you now sit as a prospective juror for the trial of this case do you have any opinion one way or the other as to what happened or to the guilt or innocence of the one that is accused of that crime?

JUROR GOAD: No, sir.

Q. You have no such opinion?

JUROR GOAD: No, sir.

Q. And, Mr. Raney, do you recall having read anything

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in the newspaper or observed anything over the television or heard the case discussed in any way?

JUROR RANEY: Yes, sir, I take the paper every day just for information. I do remember reading it.

Q From what you have read in the newspaper or heard, either discussed in the community or from any source, did you form or do you now hold any opinion as to what happened or as to the guilt or innocence of the one accused of that crime?

JUROR RANEY: I have no opinion.

Q You have no opinion?

And, Miss McGowan, do you recall having read or heard anything about the case?

JUROR MCGOWAN: I read it but I don't recall it.

Q From what you may have read or heard discussed about the case, did you at that time form any opinion as to the guilt or innocence of the one charged with the crime or do you now hold any such opinion concerning what happened or the guilt or innocence of the defendant?

JUROR MCGOWAN: No, I can't.

Q You have no opinion one way or the other?

JUROR MCGOWAN: No opinion one way or the other.

Q Mr. Campbell, do you recall having read anything about the case or heard it discussed in the community?

JUROR CAMPBELL: I read it in the paper.

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Q From what you learned of the case through the newspaper did you at that time form any opinion as to the facts or issues in the case or the guilt or innocence of the defendant?

JUROR CAMPBELL: No, sir.

Q And hold no such opinions as of this moment, I take it?

JUROR CAMPBELL: No, sir.

Q Mrs. Carpenter, do you recall having read or heard something of the case at the time of the event or occurrence?

JUROR CARPENTER: If I did I don't recall it any more.

Q Do you now as a prospective juror have any opinion one way or the other as to what happened or as to the guilt or innocence of the defendant?

JUROR CARPENTER: No, sir.

Q None whatsoever?

JUROR CARPENTER: No, sir.

Q And, Mrs. Hobbs, you indicated you had recalled reading something in the newspaper, hearing the case discussed?

JUROR HOBBS: Yes, sir.

Q From what you learned of the case or what you may have heard or read, did you then form any opinion, without stating what that opinion is, of course, did you then form any opinion as to what happened or as to guilt or innocence

of the defendant?

JUROR HOBBS: No, sir.

Q And you now hold no such opinion?

JUROR HOBBS: No.

Q Mr. Gray, do you recall having read or --

JUROR GRAY: [Interposing] I seen it on the news.

Q From what you may have heard of the case, did you then form or express any opinion as to what happened or as to the guilt or innocence of the one charged with that crime?

JUROR GRAY: No, sir.

Q Do you hold any such opinion at the present time?

JUROR GRAY: No.

Q Mr. Willoughby, do you recall having read or heard something of the case?

JUROR WILLOUGHBY: Yes, sir.

Q From what you may have heard or read did you form or do you now hold any opinion as to what happened or as to the guilt or innocence of the one charged with that crime?

JUROR WILLOUGHBY: No, sir.

Q You have no opinion one way or the other?

JUROR WILLOUGHBY: No, sir.

Q Mr. Redd, do you recall having read or heard of the case?

JUROR REDD: Yes, sir.

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Q From what you may have read or heard, did you form or do you now hold any opinion as to what happened or as to the guilt or innocence of the one charged with that crime?

JUROR REDD: No, sir.

Q Mr. Maddox, if I asked that same question of you, what would your answer be?

JUROR MADDOX: I have no opinion.

Q You have no opinion?

JUROR MADDOX: No, sir.

Q Mr. Knight?

JUROR KNIGHT: I read it in the paper and didn't put it to the name of the fellow until later, somebody was ---.

Q From what you may have read or heard did you at that time or do you now entertain any opinion as to what happened or as to the guilt or innocence of the one charged with that crime?

JUROR KNIGHT: No.

Q You have none?

JUROR KNIGHT: No, sir.

Q Let me ask all of you this then. As you now sit as prospective jurors do you have an open mind so that you can and will listen to the law, listen to the evidence during the trial of this case and a true verdict render based upon what you hear during the trial? Can you do that, each one of you?

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[REPORTER'S NOTE: Affirmative response from prospective jurors in the box.]

THE COURT: Mr. Burnett?

MR. BURNETT: Yes, sir.

THE COURT: Is the State waiving the death penalty in this case?

MR. BURNETT: No, sir.

THE COURT: Is the State then seeking the death penalty?

MR. BURNETT: Yes, sir.

BY THE COURT:

Q In that respect then, ladies and gentlemen, let me ask you this: Do any of you have any conscientious scruples or fixed beliefs in opposition to the use of the death penalty in a proper case?

JUROR REDD: What do you call a proper case, Your Honor?

Q In this or any case, do you have any conscientious scruples or beliefs in opposition to the use of the death penalty?

JUROR REDD: I don't believe in taking another person's life.

Q Let me ask it this way: Could you and would you, if selected as a juror in the trial of this case, under your oath as a juror, consider the death penalty as a proper

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penalty in this or any case?

JUROR REDD: I don't know, Your Honor.

Q Mr. Redd, of course, you and you alone are the only one that knows what your beliefs or your opinions are. The Court cannot delve into your mind. Let me ask you this, Mr. Redd, as well as all of the rest of the jurors: If you are selected as a juror for the trial of this case you will be entrusted, under your oath as a juror, with two distinct responsibilities. First, under your oath and based upon the law and evidence of the case, you must determine whether or not Bill Woodard is guilty or innocent of capital felony murder. Secondly, if you find that he is guilty then it will be your duty under your oath as a juror to follow the laws of the State of Arkansas to determine whether or not his sentence should be one of imprisonment or of death. If you are selected as a juror for the trial of this case, can you and will you be able to lay aside any personal views, opinions or beliefs which you may hold regarding the death penalty and make the discretionary judgment entrusted to you as a juror and thus obey and uphold your oath as a juror and follow the laws of the State of Arkansas by considering, and if the law as instructed by the Court and the evidence justified, vote to return a verdict which carries with it the death penalty? Could you do that?

JUROR REDD: I don't know, Your Honor.

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Q Mr. Bonham, what was your response or answer to that question? Could you and would you under your oath as a juror be able to lay aside any personal beliefs or opinions that you might hold concerning capital punishment and if the law and the evidence justified consider a verdict which carries with it the death penalty if you thought that was the just and proper verdict in the case return a verdict which carries with it the death penalty? Could you do that?

JUROR BONHAM: Well, sir, I don't know. I really don't believe in taking another man's life. I would have to say that. Possibly in some cases, I don't know. I mean it would depend on what someone -- I just don't know. If it comes to that point I would have to say I would be undecided. I don't know.

Q Let me ask you this, Mr. Bonham. Is it your position that if selected as a juror in the trial of this case that you could not consider and could not, as a juror, return a verdict which carried with it the death penalty?

JUROR BONHAM: Well, I maybe would consider.

Q Mr. Redd, let me ask you this, sir, and I don't want to belabor the point. Is it your view or position, Mr. Redd, that you could not or would not as a juror be able to consider the death penalty if that is the law of the State of Arkansas as you are instructed under your oath? In other words, could you consider that as a penalty for capital

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felony murder?

JUROR REDD: I could consider it, Your Honor, but I don't know whether my conscience would let me do it or not.

Q Are you saying that you could not or would not return a verdict carrying with it the death penalty or that you just simply don't know?

JUROR REDD: I just don't know.

Q Mr. Goad, do you have any conscientious scruples or fixed beliefs in opposition to the use of the death penalty?

JUROR GOAD: Mister, I just flat don't know when it really comes right down to it.

Q If you are accepted as a juror in the trial of this case, Mr. Goad, as a juror and under your oath you will have two distinct responsibilities to discharge. First, you, as a juror, must make a decision as to whether or not the defendant, Billy Woodard, is guilty or not guilty of capital felony murder, that is the commission of a murder in the perpetration of a robbery. Secondly, if you find the defendant guilty then it would be your duty under your oath to follow the law of the State of Arkansas and to determine whether or not the proper sentence in this case is one of imprisonment or of death by electrocution at the hands of the State. If you are selected as a juror for the trial of this case can you and will you be able to consider the law

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of the State of Arkansas providing for the death penalty, consider the death penalty as a proper verdict, and if you feel that is the true verdict return a verdict which carries with it the death penalty?

JUROR GOAD: I just don't know.

Q Mr. Raney, do you have any conscientious scruples or objections to the death penalty?

JUROR RANEY: Your Honor, when I think that it would prove beyond a doubt that he is guilty I would have to go along with the verdict of the State.

Q You would and could consider the laws of the State of Arkansas and consider that as a penalty along with imprisonment, of course?

JUROR RANEY: If that be the just thing.

Q I want to make it plain and clear to you that you are not under any obligation and your oath doesn't tell you to return a verdict providing for the death penalty. But if you find him guilty you have got to either decide whether imprisonment or the death penalty is the proper penalty.

Again, my only question is, can you lay aside any personal beliefs and consider the law and, if necessary, return a verdict carrying with it the death penalty?

JUROR RANEY: I could.

Q You could and would do that, I take it?

JUROR RANEY: I think so.

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Q Miss McGowan, the same question?

JUROR MCGOWAN: Yes, I could and would.

Q And, Mr. Campbell?

JUROR CAMPBELL: The same.

Q And, Mrs. Carpenter?

JUROR CARPENTER: Yes, I think that I could.

Q Mrs. Hobbs?

JUROR HOBBS: No, I couldn't return a death penalty.

Q You could not and would not under your oath consider the law of the State of Arkansas? In other words, your personal feelings would override the laws of the State of Arkansas --

JUROR HOBBS: [Interposing] The death would.

Q -- and return a verdict carrying with it the death penalty?

JUROR HOBBS: No, sir, I could not.

THE COURT: Do you submit her?

MR. BURNETT: Yes, sir.

THE COURT: You may stand aside, Mrs. Hobbs.

BY THE COURT:

Q Mr. Gray, you heard the questions. Do you have any conscientious scruples or beliefs against the death penalty so that you could not or would not consider it as a part of the law of the State of Arkansas and return a verdict in a proper case if it carried such a penalty?

JUROR GRAY: I would go with the law on that.

Q In other words, you could and would if you felt compelled by the circumstances and return or at least consider that punishment for the crime?

JUROR GRAY: I think I could.

Q Mr. Willoughby?

JUROR WILLOUGHBY: The same.

Q Mr. Redd I believe I have asked. Mr. Maddox?

JUROR MADDOX: I could.

Q Mr. Knight?

JUROR KNIGHT: I believe I could.

THE COURT: Call one other into the box, please.

CLERK: Number forty-four, B. C. Duffell.

BY THE COURT:

Q Mr. Duffell, where is your home, please, sir?

JUROR DUFFELL: Waldenburg.

Q What is the nature of your business or occupation?

JUROR DUFFELL: Truck driver.

Q How old are you, sir?

JUROR DUFFELL: Fifty-four.

Q Have you ever served on a jury previously?

JUROR DUFFELL: No, I haven't.

Q Mr. Duffell, could you hear from where you were seated in the courtroom earlier the identification of the parties, the attorneys and a brief statement of what this

case is about, the facts in the case? Could you hear that from where you were seated?

JUROR DUFFELL: I heard all of the talking.

Q Are you represented by either of the attorneys in this case?

JUROR DUFFELL: No, sir.

Q Are you related to either of the attorneys?

JUROR DUFFELL: No, sir.

Q Are you related to the defendant, Bill Woodard, either by blood or marriage?

JUROR DUFFELL: No, sir.

Q Are you personally well acquainted with the defendant, his wife or any member of his family?

JUROR DUFFELL: No, sir.

Q Do you recall having read anything in the newspaper or heard anything over the television or heard the case discussed in the community?

JUROR DUFFELL: No, sir, I don't think so. I heard something about it but I don't remember nothing about it.

Q From what you may have heard about the case, did you at that time form any opinion or do you now hold any opinion as to what happened or as to the guilt or innocence of the defendant?

JUROR DUFFELL: No, sir.

Q Do you, Mr. Duffell, have any conscientious

scruples or fixed beliefs in opposition to the use of the death penalty?

JUROR DUFFELL: Well, a lot of things would depend upon that.

Q I realize that and that is the whole matter, Mr. Duffell. The only question is, if you were selected as a juror in the trial of this case your oath requires you to uphold and follow the law as instructed by the Court, that law giving the jury the alternative or option of fixing the penalty in the event they first, of course, find him guilty of capital felony murder. The jury must fix the penalty, that penalty under the law being either imprisonment or death by electrocution. Could you follow the law and the evidence in this case and consider death by electrocution as a penalty?

JUROR DUFFELL: I could consider it.

Q Could you, if justified, return a verdict which carried with it the death penalty?

JUROR DUFFELL: I don't really know.

Q In other words, some jurors say, I have a conscientious scruple against the death penalty. I don't care what the law of the State of Arkansas is, I don't care what the facts in any case is, I am not as a juror under my oath or otherwise going to follow that law if it requires me to consider the death penalty as a penalty for this crime. And

I cannot and will not return a verdict of guilty if it requires the death penalty.

JUROR DUFFELL: Well, I will say this, Your Honor. If there was no doubt I think I could.

Q You think that you could?

JUROR DUFFELL: If there was no doubt of what he was guilty of.

Q I will be the first to agree with you, sir. It is an extreme penalty. The only thing that I want to know is can you consider it and follow the law if the facts and the law are justified?

Do any of you know of any fact, thing or circumstance whatsoever as to why you feel like you could not or should not sit as a juror in the trial of this case? I take it there are none.

If you are selected for the trial of this case can you and will you listen very carefully as the evidence and testimony is presented to the instructions of law and base your verdict solely and only upon that which you hear during the trial of the case? Can each of you do that under your oath?

Can each of you under your oath give all parties concerned, that is Billy Woodard and the State of Arkansas, a completely fair and impartial trial based upon the law and the evidence in this case? Can you do that, each of you?

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You may inquire further on voir dire.

BY MR. BURNETT:

Ladies and gentlemen, prospective jurors, as the Court told you my name is David Burnett. I am your elected prosecuting attorney. Seated with me is Mike Everett, the deputy prosecuting attorney for Poinsett County. We will be presenting the State's case to you today as we get started and until the court has concluded its business if you are selected as a juror.

The Court really I believe has asked you most of the questions that I had in mind. Some of your answers may have prompted me to ask you other questions. I hope that you will bear with me. None of these questions are asked to embarrass you. The purpose of this particular part of the trial is to select a fair and impartial juror for both the State and the defendant. That is my sole purpose, to find twelve people who can sit up here, listen to the facts and then decide the case upon the evidence that you hear from the witness stand and the law as given you by the Court. That is all that I am asking you to do if you are selected.

Mr. Knight, I notice that you had indicated in response to one of the Court's questions that you were employed with Singer in Trumann?

JUROR KNIGHT: Right.

Q And that the defendant had previously worked with

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you?

JUROR KNIGHT: Yes, sir.

Q Do you know whether or not any of his relatives work for Singer now or do they work under you in Singer?

JUROR KNIGHT: None of them works under me. I think that his mother and father both work there. I don't know whether they are or not at this time. I have no idea.

Q Do you have a supervisory position there?

JUROR KNIGHT: Yes.

Q Would there be anything about your employment and the fact that the defendant had formerly worked at Singer and that his mother and father work there that would be of an embarrassment to you to serve on this jury?

JUROR KNIGHT: No, not for me.

Q And I believe that you indicated to the Court that you could and would consider the death penalty?

JUROR KNIGHT: Yes.

Q I am going to ask each of you this question and just one or two others.

Can each of you consider the evidence in the case and let that be the determining factor in your decision in the case, the evidence that you hear from the witness stand, the sworn evidence? Can each of you do that?

Then can you take that evidence, put it together with the instructions of law that the Court gives you and reach a

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decision? Can you do that? Will you do that is what I am asking? All right.

Can you set aside any prejudices that you might have in your mind, any fixed notions or preconceived ideas or any sympathy? Can you decide the case upon the cruel, hard facts that will be presented to you or the facts that are presented to you? Can each of you do that, set aside any particular or personal feelings that you might have on the case and decide it upon the facts that come from this witness stand? That is what it is all about. I want you to be just as fair to the defendant as you are to the State. Can you do that?

All right, now, the reason I asked you about sympathy is because in any case everyone feels sympathetic feelings for anyone that is in trouble. That is a natural thing. That is the human thing. Can each of you set aside that normal, natural sympathy that you might feel for one person or for any person and decide the case upon the facts and the law? Can each of you do that?

MR. BURNETT: I believe that is all, Your Honor.

THE COURT: Mr. Dabney?

BY MR. DABNEY:

Q I have a few questions here that I feel would be helpful to us in selecting a jury. First, we need somebody who has absolutely no qualms whatever about finding a person

not guilty or innocent unless it is proven beyond a reasonable doubt that he is guilty.

I would like to use the same coverage here, if you will, with every member of the jury that the Court used in discussing the possible death penalty because it is all a part of it. It is just as much your duty to find a man innocent if he is innocent.

First, now, Mr. Bonham, it is my understanding that you are related to the sheriff of this county, is that correct?

JUROR BONHAM: Yes.

Q As a brother-in-law?

JUROR BONHAM: Yes..

Q Now, how long have you been in the family?

JUROR BONHAM: Eighteen or nineteen years.

Q Eighteen or nineteen years? You are married to Mr. Crawford's sister as I understand?

JUROR BONHAM: Right, sir.

Q All right, sir. And you are aware of the fact that Mr. Crawford is the chief law enforcement officer of the county?

JUROR BONHAM: Yes, sir.

Q And will be a witness in the case?

JUROR BONHAM: Yes, sir.

Q Now, Mr. Bonham, do you feel that that relationship between you and the sheriff would make it difficult for

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you to serve as a juror in this case?

JUROR BONHAM: That would have no bearing whatsoever.

Q But you are related to him as a brother-in-law?

JUROR BONHAM: Yes, sir.

MR. DABNEY: Your Honor, I believe that is close enough. The defendant would submit him.

THE COURT: You are not related by blood?

MR. BONHAM: No, sir.

THE COURT: Is that in the prohibitive degree?

MR. BURNETT: No, sir, I don't believe it is.

THE COURT: I am not too much on family trees. I don't know whether that makes him a first, second, third or fourth degree.

MR. DABNEY: I believe a brother-in-law is pretty close kinship there, especially when they are living in the same town.

MR. BURNETT: It would have to go to the nearest common ancestry, Your Honor. They don't have one other than that.

BY THE COURT:

Q Mr. Bonham, you say that your acquaintanceship or relation through marriage with the sheriff, would that in any way consciously or unconsciously possibly color or influence your decision in the case one way or the other?

JUROR BONHAM: No, sir, I don't think so.

Q In other words, you wouldn't hold that against the sheriff because he is on one side or the other, would you?

JUROR BONHAM: No, sir.

Q And you wouldn't favor a side merely because the sheriff maybe testified as a witness for that side?

JUROR BONHAM: That is right, no influence whatsoever.

Q Would you give any more or less credit or weight to the testimony of Sheriff Crawford if he testifies merely because of this relationship?

JUROR BONHAM: I would say that because Mr. Crawford is my brother-in-law, this would have no bearing whatsoever on me.

Q You could and would weigh his testimony by the same rules --

JUROR BONHAM: [Interposing] That is right.

Q -- as you weigh the testimony of any other witness to determine what you felt to be the truth?

JUROR BONHAM: That is right, sir.

THE COURT: It will be denied.

MR. DABNEY: May I pursue that thought a little further, Your Honor?

THE COURT: Yes, sir.

BY MR. DABNEY:

Q Mr. Bonham, how often do you visit Mr. Crawford, how often do you see him?

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JUROR BONHAM: Well, frequently you might say, quite often.

Q Would you say every week at least?

JUROR BONHAM: Well, I would say that I see him, yes, sir, every week or more.

Q Have you discussed this particular case with Mr. Crawford?

JURORO BONHAM: No, sir.

Q Have you discussed it with anybody who purports to be a witness to the case?

JUROR BONHAM: No, sir.

Q Now, Mr. Bonham, do you believe that it is good law that a person must be proven guilty beyond a reasonable doubt?

JUROR BONHAM: Yes, sir.

Q Do you believe that if there is a reasonable doubt in your mind when all of the evidence is brought in in this case, if there is a reasonable doubt as to whether or not Billy Woodard committed this crime that you could acquit?

JUROR BONHAM: Well, if there was a doubt, if there was a doubt in my mind; is that right?

Q Yes, sir.

JUROR BONHAM: I think so.

Q You could bring in a verdict of not guilty?

JUROR BONHAM: Well, I believe so.

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Q. Notwithstanding the fact that there are some probably thirty to forty or more people subpoenaed as witnesses and that a number of these are police officers?

JUROR BONHAM: Well, I think that I would have my own opinion. I don't think anyone else would have any influence on me.

Q. Would you give a police officer's testimony any more credence? Would you believe that any faster than you would an ordinary John Q. Citizen?

JUROR BONHAM: Yes, sir, possibly. It should be, I think.

Q. It should be. Submit him, Your Honor.

THE COURT: Mr. Bonahm, if I understand your answer then you feel like that you would tend to give more weight or believe an officer's testimony merely because he was an officer than you would some ordinary citizen?

JUROR BONHAM: Well, yes, sir. I said, they should be. I really didn't say that I would. I mean, it should be that way but maybe it is not, so maybe I should have backed up.

THE COURT: In weighing the evidence and the testimony do you feel like that you might be more readily to believe or to give more weight or credit to the testimony of a police officer because he was a police officer?

JUROR BONHAM: No, sir, not necessarily, no, sir.

THE COURT: Could you and would you again weigh

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the testimony of any police officer who testified by the same rules and same law governing the weight and credibility to be given the testimony of any witness?

JUROR BONHAM: I didn't hear you, Judge.

THE COURT: I got a little bit confused myself there before it was over with.

Would you, as a juror, weigh the testimony of any police officer who may testify by the same rules and the same laws to be given to the weight and credibility to be given to the testimony of any other witness?

JUROR BONHAM: Yes, sir.

THE COURT: You may continue.

BY MR. DABNEY:

Q. Mr. Bonham, what newspapers do you take?

JUROR BONHAM: The Jonesboro Sun and the Modern News.

Q. Do you read them pretty thoroughly?

JUROR BONHAM: Yes, sir.

Q. Now, did you read any of the newspaper articles about the time that it is alleged that Mr. Baker died?

JUROR BONHAM: Yes, sir, I vaguely remember. I mean -- I couldn't comment in any way.

Q. But you do have a recollection of it?

JUROR BONHAM: Yes, sir, I do remember it.

Q. Did you see it on television?

JUROR BONHAM: Not that I recall.

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Q Did you discuss this with Gerald Crawford?

JUROR BONHAM: I don't really think so; no, sir, I don't think.

Q Did you discuss it with anybody who --

JUROR BONHAM: [Interposing] No, sir; no, sir, I would think not.

Q And do you have an opinion now as to the guilt or innocence of Billy Woodard?

JUROR BONHAM: No, sir.

Q You have no opinion one way or the other?

JUROR BONHAM: Well, no, sir, I don't.

Q Now, Mr. Goad, have you heard --

THE COURT: Before you voir dire another juror I'm going to give a brief recess. You are free to leave the box if you care to.

[Recess.]

THE TRIAL CONTINUED:

THE COURT: Court will be in session. You may continue with your voir dire.

BY MR. DABNEY:

Q Mr. Goad, I believe we were talking with you about your qualifications as a juror. Did I understand you correctly that you told the Court that you had heard nothing about this particular case?

JUROR GOAD: No, sir.

Q And you don't know any of the witnesses involved?

JUROR GOAD: No, sir.

Q Let me ask you this: The fact that a man, in this case Billy Woodard, is charged with committing a crime, does that create such an inference in your mind that he must be guilty of something?

JUROR GOAD: No, sir.

Q Right now he is coming into this court just like anybody else here?

JUROR GOAD: Yes, sir.

Q And can you base your decision in this case solely on the testimony that you hear from the witness stand and the law as His Honor gives it to you?

JUROR GOAD: Yes, sir.

Q You can and you will do that?

Mr. Goad, let me ask you this: If there is any doubt in your mind that Billy Woodard did not do what he is accused of doing, even though there is lots of evidence that suggests that possibly he could have done it, would you acquit him? Do you believe that you could turn him loose if there is any doubt in your mind at all?

JUROR GOAD: Yes.

Q You could and would do that?

JUROR GOAD: Yes, sir.

Q Mr. Raney, I will ask you the same question about

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whether or not the fact that Billy Woodard is charged with an offense, does that create some sort of a presumption or opinion in your mind that he must be guilty of something or he wouldn't be charged?

JUROR RANEY: Not until it is proven, sir.

Q And by proving I will ask you the same question I asked Mr. Coad there. If there is evidence to show that he may be connected with it some way but yet there is some doubt lingering in your mind as to whether or not he did commit this crime, do you believe that you could turn him loose?

JUROR RANEY: If I had no conscientious doubt and all of the facts were there that he was guilty.

Q If you had any lingering doubt there that he was not guilty. Do you realize that a man must be proven guilty beyond a reasonable doubt? Do you believe that is good law?

JUROR RANEY: Yes.

Q Do you believe that it is better sometimes, I am not saying this case, but sometimes it is better to release a man if there may be some doubt about it than it is to find him guilty?

JUROR RANEY: If there is some doubt.

Q If there is doubt do you believe --

JUROR RANEY: [Interposing] If there is doubt and he's not proven guilty.

Q. I want you to answer this for me now. Unless the State proves beyond a reasonable doubt that this man is guilty, can you turn him loose?

JUROR RANEY: Yes, sir.

Q. I will ask you this now: This man is charged with the crime of murder. He is charged with the crime of killing someone. Does the fact that he is charged with killing someone so shock your conscience that you would have trouble giving him a fair trial?

JUROR RANEY: No, sir.

Q. And you could and would do that?

JUROR RANEY: Yes, sir.

Q. And some of the witnesses in this case, I believe many of the witnesses in fact, will be police officers. Does the fact that police officers will be here to testify, probably in uniform, would that tend to give their testimony any more credence than it would be Billy Woodard's?

JUROR RANEY: No, sir, I would listen to the facts only.

Q. All right, sir. And when all of the evidence is in, then if there is any doubt in your mind you could and you would acquit him?

JUROR RANEY: I'm sorry?

Q. If there is any doubt at all in your mind about whether or not -- if there is any lingering doubt of his

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innocence, even if there is a multitude of facts presented that he may have been guilty, if there is a reasonable doubt in your mind, do you believe that you could acquit?

JUROR RANEY: Yes, sir.

Q And you would do that?

JUROR RANEY: Yes sir.

Q Miss McGowan, I ask you the same questions generally about this. Billy Woodard is charged with the crime of capital felony murder it is called, which is a legal term, which means that the State is charging that he killed a man in the perpetration of a crime. Does the fact that he is charged with an offense such as this create such a feeling in your mind that you feel like he must be guilty of something?

JUROR MCGOWAN: No, sir.

Q It does not?

JUROR MCGOWAN: No, sir.

Q Do you believe in the doctrine that a man is innocent until he has been proven guilty?

JUROR MCGOWAN: Yes, sir.

Q Do you believe that it is good law that that guilt must be proven beyond a reasonable doubt?

JUROR MCGOWAN: Yes. That is a good law to me.

Q Thank you, ma'am. Do you believe that if selected as a juror in this case, even though there is lots of

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evidence tending to show that Billy Woodard may have committed this crime, if there is any doubt in your mind that you could and you would vote not guilty?

MR. BURNETT: Your Honor, I am going to object to the continuous phrase to any doubt that Mr. Dabney keeps making. If he wants to question the jury on voir dire about doubt he should use the proper legal test which is reasonable doubt.

THE COURT: The objection is sustained.

MR. DABNEY: If Your Honor please, I did use reasonable doubt to this juror and I think the juror is fully capable of it. I appreciate Mr. Burnett's concern but I am just as concerned that this defendant get a fair trial.

THE COURT: The objection will be sustained to any doubt. Reasonable doubt is the test.

BY MR. DABNEY:

Q Legal hocus-pocus, reasonable doubt, whatever. Not to depart from your common sense. Now, if selected as a juror the criteria, as Mr. Burnett suggested, is reasonable doubt. If the Court would define reasonable doubt in its instruction to you and if there was reasonable doubt in your mind, can you acquit?

JUROR MCGOWAN: I believe if there was reasonable doubt I could acquit him.

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Q Billy Woodard is charged with murder. He is charged with capital felony murder. It is incumbant on the State of Arkansas to prove to your satisfaction beyond any reasonable doubt that he is guilty of the crime that he is charged with. My question is this: Will you require the State to prove beyond a reasonable doubt that he is guilty? And if there is a reasonable doubt in your mind will you vote to acquit him?

JUROR MCGOWAN: I would if there is reasonable doubt.

Q Thank you, ma'am.

Mr. Campbell, I believe that you said that you have served on a jury a good many times, did you not?

JUROR CAMPBELL: Quite a few times.

Q And you have served on criminal juries as well?

JUROR CAMPBELL: No, sir.

Q Just on civil?

JUROR CAMPBELL: Right.

Q And, Mr. Campbell, does the fact that Billy Woodard is charged with a crime that could send him to the electric chair, does that create such an opinion in your mind that you would have difficulty in giving him a fair trial?

JUROR CAMPBELL: No, sir.

Q Do you realize, Mr. Campbell, that he is here under an information only which is a formal charge and there is no evidence, he has never been in court at any time for a

hearing on this matter? This is a charge, it's a formal charge, called an information filed by the prosecuting attorney's office. Does the fact that the prosecuting attorney's office has filed a charge against him create such an opinion in your mind that he must be guilty of what he is charged with?

JUROR CAMPBELL: No, sir.

Q You can try this case solely and only upon the facts that you hear from the witness stand and the law as His Honor gives it to you and base your verdict solely on that, the law and the evidence? You would do that?

JUROR CAMPBELL: Yes.

Q Let me ask you this, Mr. Campbell: If there is any reasonable doubt in your mind, even though there may be lots of evidence introduced tending to show that he might have committed a crime, if there is any doubt in your mind at all as to his guilt, any reasonable doubt, could you and would you vote for a verdict of not guilty?

JUROR CAMPBELL: Yes.

Q Mr. Carpenter, you have heard me question the jurors here and I won't belabor you with extended examination. But would your answers to the question primarily about publicity w.. h might be in the news paper that you read, I know living in this area you have read the newspaper and you probably read accounts of this particular incident. Any-

thing that you have read in the newspaper, does that cause you to have an opinion one way or the other about the guilt or innocence of Billy Woodard?

JUROR CARPENTER: No.

Q And right now you are coming into this courtroom with no fixed opinion one way or the other?

JUROR CARPENTER: I don't think so.

Q And right now you are entirely impartial?

JUROR CARPENTER: Right.

Q Now, if after all of the evidence is in and the State has not proved to your satisfaction beyond a reasonable doubt that Billy Woodard has committed the crime he is charged with, do you believe that you could vote for acquittal?

JUROR CARPENTER: Yes.

Q You could and you would do that?

JUROR CARPENTER: If there was no proof I would.

Q Thank you, ma'am.

Mr. Duffell, have you read any of the newspaper articles or television? Possibly I believe you said you might have seen the news?

JUROR DUFFELL: If I did I don't remember it.

Q What you saw or read, did that cause you to have a fixed opinion regarding --

JUROR DUFFELL: [Interposing] No; no.

Q Does the fact that some of the police officers

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involved will be in uniform, they will be here with their uniforms on in an official capacity to testify, would that tend to cause you to give their testimony any more credence than the ordinary citizen?

JUROR DUFFELL: No, I don't think so.

Q Mr. Duffell, if you are selected on this jury, if there is any reasonable doubt in your mind that says this man is not guilty, there is some other way that it might have happened, I just don't believe I have a doubt in my mind, do you believe that you could have a vote of acquittal?

JUROR DUFFELL: Yes, I think so.

Q Mr. Gray, what you have read in the newspaper, does that cause you to have any fixed opinion one way or the other about Billy Woodard's guilt or innocence?

JUROR GRAY: No, sir.

Q Does the fact that he is charged with a felony crime so inflame your sense of right that you would have difficulty in giving him a fair trial?

JUROR GRAY: No, it don't.

Q Do you believe that it is good law that a man is innocent until he is proven guilty?

JUROR GRAY: That is right.

Q And he is innocent until proven guilty beyond a reasonable doubt?

JUROR GRAY: Right.

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Q If selected as a juror in this case can you and will you decide this case solely on the evidence that you hear from the witness stand and the law as is given to you by the Court and base your verdict soley on what the evidence and the law as you hear it? You can and will do that?

JUROR GRAY: Yes.

Q Mr. Willoughby, have you served on a jury before?

JUROR WILLOUGHBY: On civil. That has been some years ago.

Q And you have never served on a criminal jury, I take it?

JUROR WILLOUGHBY: No.

Q Have you read newspaper articles concerning this particular case?

JUROR WILLOUGHBY: Yes, some.

Q What newspaper did you read it in, please?

JUROR WILLOUCHBY: Commercial Appeal.

Q And from the articles that you read did you form any opinion one way or the other about the guilt or innocence of Billy Woodard?

JUROR WILLOUGHBY: No.

Q Would the fact that police officers in uniform will be testifying tend to give any more weight to their testimony than it would be of Billy Woodard?

JUROR WILLOUGHBY: No.

Q Mr. Willoughby, after all of the evidence is in, after the State has put on its case, there has been strong evidence, we will say, as to a possibility Billy Woodard is guilty, but there is a reasonable doubt in your mind as to his guilt or innocence, do you believe that you could vote to acquit him or find him not guilty?

JUROR WILLOUGHBY: Yes.

Q You could and you would do that?

JUROR WILLOUGHBY: Yes.

Q Mr. Redd, does the fact that Billy Woodard is charged with a capital felony murder so intense you that you would have a rough time giving him a fair trial?

JUROR REDD: No, sir.

Q Would the fact that some of the officers, many of the officers, some of the witnesses will be police officers in uniform in an official capacity, would that suggest to you that their testimony would be more easily believeable than any other witness?

JUROR REDD: No.

Q And if selected as a juror in this case do you believe that you can base your verdict solely upon the law that is given by His Honor and the evidence as you hear it from the witness stand?

JUROR REDD: Yes, sir.

Q Do you believe that if selected as a juror that if

the evidence, after the evidence is in that you are not satisfied beyond a reasonable doubt that Billy Woodard is guilty could you vote for acquittal?

JUROR REDD: I could.

Q You could and would do that?

JUROR REDD: Yes.

Q Mr. Maddox, you have read newspaper articles, of course, and possibly seen it shown on TV and seen news articles about the defendant, have you not?

JUROR MADDOX: I don't believe so.

Q You haven't seen any of them?

JUROR MADDOX: I don't think so. This thing happened during rice harvest and I don't believe I saw it.

Q Have you discussed this with anybody that has purported to be a witness in the case?

JUROR MADDOX: No.

Q Do you have an opinion one way or another about the guilt or the innocence of the defendant?

JUROR MADDOX: No.

Q And if selected as a juror in this case can you decide this case solely and only on the law as given to you by the Court and the evidence from the witness stand and base your verdict solely upon the law and the evidence?

JUROR MADDOX: Yes.

Q And if there is any reasonable doubt in your mind

of Billy Woodard's guilt, would you vote for acquittal?

JUROR MADDOX: Yes.

Q Ray, would your answers be the same?

JUROR KNIGHT: I would say so.

Q You can and you will, if selected as a juror for this case, base your verdict solely and only upon the evidence and the law?

JUROR KNIGHT: Yes.

Q Is there any doubt at all in your mind you will resolve it in favor of the defendant?

JUROR KNIGHT: Yes. If there is any doubt I would vote for acquittal.

MR. DABNEY: Pass them.

THE COURT: How says the State?

MR. BURNETT: Excuse Mr. Redd.

THE COURT: Any others?

MR. BURNETT: That is all, Judge.

THE COURT: How says the defense?

MR. DABNEY: Excuse Mr. Bonham, Mr. Raney, Mr. Gray, Mr. Maddox and Miss McGowan.

THE COURT: Call the names of six other jurors. When your name is called come and have a seat beginning on the second row in the order of the vacant seats.

CLERK: Jessie T. James, Heber Martin, W. C. Bishop, Robert Parker, Presley Fahr, Joe Sam Johnson.

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BY THE COURT:

Q Addressing my questions to the last six prospective jurors to take the box, could you hear from where you were seated in the courtroom earlier the introduction of the parties and a brief statement of what the case was about?

[REPORTER'S NOTE: Affirmative answer from prospective jurors.]

Q Are any of you personally related to either of the attorneys in this case? Are any of you presently represented in any business or legal matter by either of the attorneys or have you been within the recent past? I take it that you are not.

Are any of you related to the defendant, Billy Woodard, either by blood or marriage? I take it that you are not.

Are any of you personally well acquainted with Mr. Woodard or his wife or any member of his family?

JUROR BISHOP: I worked with him five days a week and I'm acquainted with Mr. Woodard.

Q That is the father of the defendant?

JUROR BISHOP: Yes, sir.

Q And where was that?

JUROR BISHOP: At the Singer Company.

Q At Singer?

JUROR BISHOP: Yes.

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Q Mr. Bishop, how long have you worked with the father there?

JUROR BISHOP: I would say three years approximately.

Q Since this occurrence or alleged event occurred on September the 3rd, have you discussed the case with the father or heard him discuss the case in your presence?

JUROR BISHOP: No, sir.

Q You have not talked with him at all about anything or any element of the case itself?

JUROR BISHOP: No, sir, in no way.

Q Do you work directly with Mr. Woodard or just in the same department?

JUROR BISHOP: Well, in the same. He operates a big flat bed sander from about from here to the wall from where I work and we have coffee breaks together. I don't help him directly on the machine itself.

Q Would you characterize your acquaintanceship with the father as a close personal friendship or a mere casual knowledge?

JUROR BISHOP: Well, I would say, you know, just a good friend.

Q Is there anything in that friendship that you feel like might tend to bias or prejudice you or make it difficult for you to sit as a juror in the trial of this case and to render a verdict against his son?

JUROR BISHOP: Well, I would hate to really say.

Q Well, could you and would you be able, if selected as a juror, to listen to the law as it applies to this case, listen to the facts and the evidence in this case and render a verdict that you felt be a fair and a true verdict as if Mr. Woodard were a total and a complete stranger to you?

JUROR BISHOP: Sir, I don't believe in capital punishment. Now, that is my belief. I have never sat on a murder, I mean a criminal court. I have served on civil.

Q We will get into that in a minute, Mr. Bishop, possibly. Is there anything in this acquaintanceship with Mr. Woodard which you feel would make it embarrassing upon you to serve as a juror in the trial of this case?

JUROR BISHOP: Well, no, sir, I guess I could not say that it would.

Q Let me ask it this way, Mr. Bishop: If, after you have heard the evidence, instructions of law, retired, deliberated and you were not convinced beyond a reasonable doubt of the guilt of the defendant, would you have any hesitancy at all to return a verdict of not guilty?

JUROR BISHOP: Well, no, if I had any doubt in my mind that he wasn't guilty, sir.

Q If based upon the law and the evidence of this case and you were convinced and believed beyond a reasonable doubt that the defendant was guilty as charged, would you

have any hesitancy or reluctance on your part to return a verdict of guilty?

JUROR BISHOP: Well, sir, I would if it is a death penalty.

Q What I was referring to, Mr. Bishop, in other words, you are working daily with Mr. Woodard. Could you face him and would your friendship be affected or would it worry you or concern you in returning a verdict thinking, well, what am I going to tell Mr. Woodard tomorrow when I see him at work? Would that bother you at all?

JUROR BISHOP: Well, sir, I will put it this way: If it was the death penalty it sure would.

Q I take it then, Mr. Bishop, from what you say it is your view and your belief that irrespective of what the law of the State of Arkansas provides you could not and would not as a juror consider the death penalty or return a verdict which carries with it the death penalty?

JUROR BISHOP: No, sir.

Q You just could not and just would not consider the law?

JUROR BISHOP: I just don't believe in it that way.

MR. BURNETT: I will submit him, Your Honor.

THE COURT: You may stand down, Mr. Bishop.

JUROR BISHOP: I am sorry. I just don't believe in that.

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THE COURT: Call one other into the box.

CLERK: Mary Jane Payne.

BY THE COURT:

Q Mrs. Payne, could you hear the statements and introduction of the parties from where you were seated?

JUROR PAYNE: Yes, sir.

Q Are you represented by either of these attorneys or related to any of the parties?

JUROR PAYNE: No, sir.

Q Are you personally acquainted with the defendant, Billy Woodard, or any member of his family?

JUROR PAYNE: N r.

Q Mr. James, where is your home, please, sir?

JUROR JAMES: Marked Tree.

Q What is your business or occupation?

JUROR JAMES: I am a retired ginner.

Q A retired ginner. And your age, please, sir?

JUROR JAMES: Seventy-five.

Q Have you ever served on a jury prior to this?

JUROR JAMES: Yes, sir.

Q How long ago?

JUROR JAMES: Oh, it's been ten or twelve years ago. I don't remember how long.

Q Do you recall if that was a civil or criminal term of court?

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JUROR JAMES: Well, I was on one. I have been on two civil cases and I have been on one criminal case, homicide.

Q It was a homicide case?

JUROR JAMES: Yes, sir.

Q If you recall, what was the verdict in that case, guilty or not guilty?

JUROR JAMES: Guilty. I don't know if I put it right or not. They had him for -- well, they had a wreck anyway. A lady was killed in it. It was an accident. And the verdict, they give him two years on a suspended sentence and suspended his driver's license for twelve months.

Q And, Mr. Martin, where is your home, please, sir?

JUROR MARTIN: Trumann, Arkansas.

Q And you are in the jewelry business there?

JUROR MARTIN: That is right.

Q And your age, please, sir?

JUROR MARTIN: Sixty-two.

Q Have you had any prior jury service?

JUROR MARTIN: Civil in 1965.

Q And, Mrs. Payne, where is your home, please, ma'am?

JUROR PAYNE: Payneway.

Q And your husband's name?

JUROR PAYNE: W. R. Payne, Jr.

Q And what is the nature of his business?

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JUROR PAYNE: Farmer.

Q Are you employed yourself?

JUROR PAYNE: No, I am a housewife.

Q Have you ever had prior jury service?

JUROR PAYNE: No, sir, I haven't.

Q Mr. Parker, where is your home, please, sir?

JUROR PARKER: Harrisburg, Route 2.

Q And what is the nature of your business or occupation?

JUROR PARKER: Masonry contractor.

Q Have you ever had any prior jury service?

JUROR PARKER: Last year.

Q Was that a civil or a criminal term here if you recall?

JUROR PARKER: Well, they was trying a boy for murder, wasn't they? I don't remember. It was about a car wreck and this girl was killed in it.

Q Do you recall what the verdict was?

JUROR PARKER: He was proven innocent.

Q Proven innocent?

JUROR PARKER: Yes, sir.

Q And your age, please, sir?

JUROR PARKER: Forty-eight.

Q And, Mr. Fahr or Fahr?

JUROR FAHR: Either way.

Q Where is your home, sir?

JUROR FAHR: Harrisburg.

Q What is the nature of your business or occupation, Mr. Fahr?

JUROR FAHR: I run a grocery store.

Q Have you ever had any prior jury service?

JUROR FAHR: No, sir.

Q And, Mr. Johnson, where is your home, please?

JUROR JOHNSON: Lepanto.

Q And what is the nature of your business or occupation?

JUROR JOHNSON: Ginner.

Q And how old are you, sir?

JUROR JOHNSON: Fifty-five.

Q And have you ever had any prior jury service?

JUROR JOHNSON: No, sir.

Q As I indicated a moment ago the defendant is charged with having committed the crime of capital felony murder to which charge he has entered a plea of not guilty. This occurrence is alleged to have occurred on September 3rd, 1975, in the floodway area. Do any of you know anything at all about the case of your own personal knowledge?

Were any of you acquainted with Mr. C. M. Baker during his lifetime or his wife, Audrey Baker?

Do any of you recall having read anything in the

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newspapers concerning the event back at the time of its occurrence or having seen anything on the television or heard it discussed in the community?

JUROR MARTIN: I read it in the Jonesboro paper.

JUROR PAYNE: I read it in the Commercial Appeal.

Q Let me ask you individually.

Mr. James, do you recall having read anything or heard anything about the case back at the time of the occurrence?

JUROR JAMES: I read something about it before there was anybody found, before there was a suspect found.

Q From what you may have read or heard at that time did you form or express any opinion concerning what had happened or the guilt or innocence of the defendant in this case or do you now hold any such opinion?

JUROR JAMES: [Shakes head from side to side.]

Q You did not form any back then and you have none at this point, I take it?

JUROR JAMES: No, sir.

Q And, Mr. Martin, do you recall having read anything?

JUROR MARTIN: Yes, sir.

Q At that time did you form any opinion about what had happened or the guilt or innocence of the defendant, or do you now hold any such opinion?

JUROR MARTIN: No, sir, I can't until I hear both

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sides.

Q Mrs. Payne, do you recall having read or heard about the case back at the time that it occurred?

JUROR PAYNE: Yes, in the Commercial Appeal. As I remember we were gone at the time and I was catching up on my newspaper reading.

Q From what you may have read or heard at that time, did you then form any opinion as to what happened or as to the guilt or innocence --

JUROR PAYNE: [Interposing] Not at that time.

Q And you have no such opinion at the present time?

JUROR PAYNE: No.

Q And, Mr. Parker, do you recall having read or heard anything about the case back at the time it happened?

JUROR PARKER: I remember it but I don't remember anything about it.

Q Did you form any opinion back at that time or do you now have any opinion as to what happened or the guilt or innocence of the defendant charged with that crime?

JUROR PARKER: I never paid any attention to it.

Q Mr. Fahr, do you recall having read or heard anything about what occurred back at the time?

JUROR FAHR: I don't know anything about it.

Q Did you form any opinion back at that time or do you now have any opinion as to the guilt or the innocence of

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the defendant or about what happened?

JUROR FAIR: No.

Q Do you now hold any such opinion at the present time?

JUROR FAIR: No, sir.

Q Mr. Johnson, do you recall having read or heard of the case at the time?

JUROR JOHNSON: Yes, sir.

Q And at that time did you form any opinion as to what had happened or the guilt or innocence of the defendant?

JUROR JOHNSON: No, sir.

Q Do you now hold any such opinion concerning the guilt or innocence of the defendant?

JUROR JOHNSON: No, sir.

Q Let me ask all six of you then if you are selected as jurors for the trial of this case can you under your oath listen to the evidence as it is presented in the trial of this case, listen to the law as you are instructed by the Court and base your verdict on the law and the evidence you hear during the trial of this case and that only? Can you do that, each one of you?

Can you under your oath give all parties, the defendant, Billy Woodard, and the State of Arkansas, a completely fair and impartial trial based upon the law and the evidence of this case? Can you do that?

[REPORTER'S NOTE: Affirmative response from the prospective jurors.]

Q Let me ask the last six of you; Mr. James, do you have any conscientious beliefs or scruples against the consideration of the death penalty?

JUROR JAMES: No, sir.

Q Mr. Martin?

JUROR MARTIN: No, sir.

Q Mrs. Payne?

JUROR PAYNE: No, sir.

Q Mr. Parker?

JUROR PARKER: Yes, I couldn't bring in a murder. I couldn't send him to the chair. I could not.

Q In other words, you could not and would not --

JUROR PARKER: [Interposing] No, sir.

Q -- if selected as a juror be able to lay aside your own personal beliefs and consider the death penalty under the laws of the State of Arkansas?

JUROR PARKER: No, I could not.

THE COURT: Do you submit him, Mr. Burnett?

MR. BURNETT: Yes.

THE COURT: Mr. Parker, I will permit you to stand aside with the thanks of the Court.

Call one other into the box.

CLERK: Charles Eason, Jr.

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BY THE COURT:

Q Mr. Fahr, do you have any conscientious scruples or fixed beliefs in opposition to the death penalty?

JUROR FAHR: No.

Q Mr. Johnson?

JUROR JOHNSON: No, sir.

Q Mr. Eason, where is your home, please, sir?

JUROR EASON: Lepanto.

Q What is the nature of your business?

JUROR EASON: Farmer.

Q And your age?

JUROR EASON: Twenty-seven.

Q Have you had any prior jury service?

JUROR EASON: No, sir.

Q Did you hear the introduction of the parties and a brief statement of what the case was about from the courtroom?

JUROR EASON: Yes.

Q Are you related to either of the attorneys or the parties in this case?

JUROR EASON: No, sir.

Q Are you presently represented by any of the attorneys?

JUROR EASON: No, sir.

Q Do you know anything at all of your own personal

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knowledge about the facts under consideration in this case?

JUROR EASON: I read about it in the newspaper.

Q You recall having read about it in the newspaper?

JUROR EASON: Yes.

Q From what you may have read or heard at that time did you form any opinion as to the facts or issues in the case, in other words, what happened or as to the guilt or the innocence of the one that is charged with that crime?

JUROR EASON: No, sir.

Q Do you hold any such opinion at the present time?

JUROR EASON: No, sir.

Q Could you give all of the parties a completely fair and impartial trial based upon the law and the evidence of this case?

JUROR EASON: Yes, sir.

Q And do you have any conscientious scruples or objections in opposition to the death penalty?

JUROR EASON: No, sir.

Q Do any of you know of any fact, thing or circumstance at all as to why you feel like you could not or should not serve as a juror in the trial of this case? I take it there are none.

You may inquire further on behalf of the State.

BY MR. BURNETT:

Q I have just a very few questions.

Mr. Eason, I don't recall - I was doing something else and I don't remember the Court asking you about your feeling on the death penalty. Did you express an opinion or feeling on it?

JUROR EASON: Yes, sir.

Q I take it then that if the evidence in this case were such that after hearing all of the evidence that you had a conviction that the defendant was in fact guilty beyond a reasonable doubt that you could consider the death penalty and that you could if you felt like the case warranted it and the facts warranted it to vote for the imposition of the death penalty?

JUROR EASON: Yes, sir.

MR. BURNETT: I don't believe I have any other questions.

THE COURT: Any voir dire, Mr. Dabney?

MR. DABNEY: Yes, Your Honor.

BY MR. DABNEY:

Q Again addressing my remarks to the last six jurors that were seated --

Mr. James, you have read newspaper articles, of course, on this particular incident. And the fact that there was an investigation around close to your old home there, or rather where you work?

JUROR JAMES: Yes, but I have been gone from my old

home for quite a while.

Q And did you follow the newspaper account pretty closely on that?

JUROR JAMES: No, sir.

Q Did you see anything on the television about it?

JUROR JAMES: I never saw it on television at all.

Q And have you heard this matter discussed with anybody that purported to be a witness to it?

JUROR JAMES: No, sir.

Q Mr. James, you have served on a criminal jury before as I remember, have you not?

JUROR JAMES: Yes.

Q And, of course, you recognize that it is the law that a man is innocent until he is proven guilty?

JUROR JAMES: Oh, yeah, I recognize that.

Q Do you believe that is a good law?

JUROR JAMES: Yeah.

Q It is a law that you can abide by if chosen for the jury?

JUROR JAMES: Yes.

Q Mr. James, if you are selected as a juror in this case, do you believe that if all of the evidence is presented, even though there may be some evidence tending to link Billy Woodard with this case, that if there was a reasonable doubt lingering in your mind as to his guilt, then you could bring

in a verdict of innocent and you could acquit him?

JUROR JAMES: I don't know how you put that.

Q Let me try to rephrase it for you. Let me say that if there is evidence tending to link Billy Woodard with this case and yet there is other evidence that creates in your mind a reasonable doubt as to whether or not he is guilty, would you bring in a verdict of not guilty?

JUROR JAMES: If I doubted any way that he was not guilty I could vote for his innocence.

Q All right, sir. You are telling me that if there is any doubt at all any reasonable doubt in your mind, that you could vote a verdict of innocence. You could and you would do that?

JUROR JAMES: Yes, sir.

Q Mr. James, does the fact that Billy Woodard is charged with an offense of this nature tend to shock your sense of dignity to any such extent that you would have a rough time serving on this jury?

JUROR JAMES: No, that don't bother me at all.

Q And the fact that it is a crime of a serious nature, that wouldn't bother you?

JUROR JAMES: No.

Q And you could try this case solely on the law and the evidence that is presented to you?

JUROR JAMES: That is all.

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Q And you would do that?

JUROR JAMES: That's all.

Q Mr. Martin, have you served on a criminal jury before?

JUROR MARTIN: No, sir.

Q And would the fact that some of the witnesses are going to be police officers, would that tend to cause you to give their testimony more credence? Would you believe them more quickly than you would any other witness?

JUROR MARTIN: No, sir, it would not.

Q And if selected as a juror in this case can you try this case solely on the law as given you by His Honor and the facts that you are getting from the witness stand?

JUROR MARTIN: I can.

Q Mr. Martin, if there is any question in your mind at all about the defendant being guilty or not guilty, would you resolve that in the favor of Billy Woodard?

JUROR MARTIN: If I really felt that way I can.

Q You would bring in a verdict of not guilty?

JUROR MARTIN: Yes, I would.

Q Mrs. Payne, I believe that you said that you had read a newspaper?

JUROR PAYNE: Well, like I said, we had been away or went away, something like that, and I picked up the papers to read them and that is all.

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Q Was there anything that you read in the newspapers there to cause you to have an opinion one way or the other?

JUROR PAYNE: No.

Q Did it so shock your beliefs that you would have a difficult time serving on a jury for someone accused of a crime such as that?

JUROR PAYNE: No, it wouldn't.

Q And do you believe that if you are selected to serve as a juror in this case that if there is any reasonable doubt in your mind, even though there is evidence to show that Billy Woodard may have been connected with it, if there is a reasonable doubt would you vote to acquit him?

JUROR PAYNE: Yes, if there was a reasonable doubt in my mind.

Q You could and would do that? Thank you, ma'am.

Mr. Eason, I believe you said that you had not served on a jury before?

JUROR EASON: No, sir.

Q Have you read newspaper accounts of this particular incident here?

JUROR EASON: Yes.

Q And have the accounts that you have read, have they caused you to form an opinion one way or the other about the guilt or innocence of Bill Woodard?

JUROR EASON: Not at all.

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Q If selected as a juror can you try this case solely on the evidence given you from the witnesses and the law given you by the Court and base your verdict solely upon that law and the evidence, and if there is any reasonable doubt whatever in your mind after all of the testimony is in, even though there may be damaging testimony, and shows that Billy Woodard may be involved, if there is any reasonable doubt, do you believe that you could bring in a verdict of acquittal?

JUROR EASON: Yes, sir.

Q You could and you would do that?

JUROR EASON: Yes, sir.

Q Mr. Fahr, you are in the grocery business?

JUROR FAHR: Right.

Q And you have read articles of this particular incident in the newspaper?

JUROR FAHR: Oh, yes.

Q And have the articles that you have read tended to cause you to have an opinion one way or the other about the guilt or innocence of Billy Woodard?

JUROR FAHR: At that time I didn't know who he was until just a few minutes ago.

Q Now, did the newspaper articles tend to bias or prejudice you in any manner against the person who may have been charged with this offense?

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JUROR FAHR: No, because I didn't know who it was.

Q Regardless of whether you knew or not, did the fact that an offense such as this did occur, did the articles that you read tend to cause you to be prejudiced against someone who may be charged with an offense like that?

JUROR FAHR: Yes, I am sure that it would.

Q And would it take the evidence to remove this opinion that you have?

JUROR FAHR: Right.

MR. DABNEY: Submit him, Your Honor.

THE COURT: You may stand aside.

Call one other into the box.

CLERK: Scott Womack.

BY THE COURT:

Q Mr. Womack, where is your home, please, sir?

JUROR WOMACK: Marked Tree.

Q What is the nature of your business or occupation?

JUROR WOMACK: Farming.

Q How old are you, sir?

JUROR WOMACK: Fifty-six.

Q Have you ever had any prior jury service?

JUROR WOMACK: No.

Q Could you hear the introduction of the parties and a brief statement of what the case was about from where you were seated in the courtroom?

JUROR WOMACK: Yes, sir.

Q Are you related to any of the attorneys in this case or the defendant, Billy Woodard?

JUROR WOMACK: No, sir.

Q Are you represented in any legal matter by any of these attorneys in this case?

JUROR WOMACK: No, sir.

Q Have you been in the recent past?

JUROR WOMACK: No, sir.

Q Do you know anything at all of your own personal knowledge concerning the facts and circumstances that give rise to this criminal charge which allegedly occurred on September the 3rd last year?

JUROR WOMACK: No, sir.

Q Do you recall having read anything in the newspapers or heard anything over the television or heard it discussed in the community back at the time the event occurred?

JUROR WOMACK: Yes, sir.

Q At that time, based upon what you read or heard, did you form any opinion as to what had happened or as to the guilt or innocence of the defendant or the one charged with that crime?

JUROR WOMACK: No, sir.

Q Do you now hold any such opinion as to the facts

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or issues in the case or as to the guilt or innocence of the one charged with the murder of C. M. Baker?

JUROR WOMACK: No.

Q I take it you have an open mind, and you are willing to listen to the law and the evidence and base your verdict solely and only upon that law and evidence which you hear during the trial of the case?

JUROR WOMACK: Yes, sir.

Q Can you give to both parties, that is the defendant, Billy Woodard, and the State of Arkansas, a completely fair and impartial trial?

JUROR WOMACK: Yes, sir.

Q Mr. Womack, I don't remember whether I asked you or not. Were you acquainted with the defendant, his father, wife or members of the immediate family?

JUROR WOMACK: No, sir.

Q Do you have any conscientious scruples or fixed beliefs in opposition to the death penalty?

JUROR WOMACK: Yes, sir.

Q Is that a belief of long standing which could not be influenced or changed by facts in the case or the evidence in the case?

JUROR WOMACK: Yes, sir.

Q Is your opinion such that you could not and would not be able to lay it aside and to consider the laws of the

State of Arkansas and consider the death penalty as a possible penalty for the crime of capital felony murder?

JUROR WOMACK: I could not.

Q You could not and would not consider it or could not and would not return any verdict which carried with it the death penalty?

JUROR WOMACK: That is right, sir.

THE COURT: You may stand aside.

Call one other into the box.

CLERK: Sam Young.

BY THE COURT:

Q Mr. Young, where is your home, please, sir?

JUROR YOUNG: Lepanto.

Q Where?

JUROR YOUNG: Lepanto.

Q What is the nature of your business or occupation?

JUROR YOUNG: Ginner.

Q How old are you, sir?

JUROR YOUNG: Fifty-three.

Q Have you any prior jury service?

JUROR YOUNG: No, sir.

Q Did you hear the introduction of the parties and a brief statement of what the case was about from where you were seated on the front row there a moment ago?

JUROR YOUNG: Yes, sir.

Q Are you personally well acquainted with the defendant, Billy Woodard, or his wife or father or any member of his family?

JUROR YOUNG: No, sir.

Q Are you represented by any of the lawyers in this case?

JUROR YOUNG: No, sir.

Q Do you know anything at all about the case itself of your own personal knowledge?

JUROR YOUNG: No, sir.

Q Do you recall having read anything in the newspaper about the events back at the time of the occurrence or heard anything over the television or heard it discussed in the community?

JUROR YOUNG: No, sir.

Q I take it then that you have no opinion as you now sit as a prospective juror concerning what happened or to the guilt or innocence of the defendant in this case?

JUROR YOUNG: No, sir.

Q Can you, if selected as a juror in the trial of this case, Mr. Young, listen very carefully to the evidence, the instructions of the law and base your verdict on the law and the evidence of this case? Can you do that, sir?

JUROR YOUNG: Yes, sir.

Q Can you give all parties a completely fair and

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impartial trial?

JUROR YOUNG: Yes, sir, but I don't believe in the death penalty like the other fellow.

Q Do I understand then that you do have some conscientious scruples or fixed beliefs in opposition to the death penalty?

JUROR YOUNG: Yes, sir.

Q Is that such an opinion that you could not lay it aside and consider the law of the State of Arkansas which gives the option to imprisonment or the death penalty?

JUROR YOUNG: That is right.

Q You would not lay that aside and would not consider --

JUROR YOUNG: [Interposing] No, sir.

Q -- the death penalty and you would not return any verdict which carried with it the death penalty?

JUROR YOUNG: No, sir.

THE COURT: I will permit you to stand aside with the thanks and appreciation of the Court, Mr. Young.

Call one other into the box.

CLERK: Rhew Bales.

BY THE COURT:

Q Mr. Bales, did you hear the introduction of the parties and a brief statement of the case from where you were seated?

JUROR BALES: Yes, sir.

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Q. Where is your home, please?

JUROR BALES: Trumann.

Q. What is the nature of your business or occupation?

JUROR BALES: I carry rural route number one out of Trumann.

Q. And your age, please, sir?

JUROR BALES: Thirty-eight.

Q. Have you had any prior jury service?

JUROR BALES: No, sir.

Q. Are you related to any of the attorneys or the defendant, Billy Woodard, in this case?

JUROR BALES: No, sir.

Q. Are you presently represented in any legal or business matters by any of the attorneys or have you been recently?

JUROR BALES: No, sir.

Q. Are you personally well acquainted with the defendant or any member of his family?

JUROR BALES: No, sir.

Q. Do you know anything at all about the case of your own personal knowledge other than what you may have read or heard?

JUROR BALES: No, sir, I don't know anything except what I read in the paper.

Q. You do recall having read some articles in the

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paper of the events back at the time of their occurrence?

JUROR BALES: Yes, sir.

Q At that time did you form any opinion as to what had happened or as to the guilt or innocence of the defendant?

JUROR BALES: No, sir.

Q Do you presently hold any such opinion?

JUROR BALES: No, sir.

Q Do you have a completely open mind and can you and will you, if selected, listen to the law and the evidence and base your verdict solely and only upon the law and the evidence that you hear during the trial of this case?

JUROR BALES: Yes, sir.

Q Can you give all parties concerned a completely fair and impartial trial?

JUROR BALES: Yes, sir.

Q Do you have any conscientious scruples or fixed beliefs in opposition to the death penalty?

JUROR BALES: No, sir.

Q Do you know of any reason, fact, thing, or circumstance at all as to why you feel like you could not or should not serve as a juror in the trial of this case?

JUROR BALES: No, sir.

THE COURT: You may inquire further.

MR. BURNETT: I don't have any questions, Your

Honor.

THE COURT: Mr. Dabney, you may voir dire.

MR. DABNEY: Thank you, Your Honor.

BY MR. DABNEY:

Q Mr. Bales, you are a mail carrier, I understand?

JUROR BALES: Yes, sir.

Q How long have you been so employed?

JUROR BALES: For thirteen years.

Q And you have been on the route, I take it?

JUROR BALES: No, sir, I carried in town for eleven years. I have been on the route for two years.

Q How long have you lived in Trumann?

JUROR BALES: All of my life, thirty-eight years.

Q And have you ever served on a jury before?

JUROR BALES: No, sir.

Q Mr. Bales, this is a criminal charge brought against Billy Woodard that we are trying today. He is charged with capital felony murder. Does the fact that he is charged with an offense so high sounding as that tend to bias or prejudice you in any way?

JUROR BALES: No, sir, I don't think so.

Q What newspapers do you read, sir?

JUROR BALES: The Jonesboro Sun.

Q All right, sir. And did you follow articles in the Jonesboro Sun regarding this particular incident?

JUROR BALES: No, sir, I didn't. I read about it when it first happened. I don't remember reading anything else about it. It has been a long time.

Q Did what you read in the paper cause you to have any fixed opinion regarding the guilt or innocence of the person who may be involved in this case?

JUROR BALES: No, sir, not one bit.

Q Now, Mr. Bales, do you understand the law of Arkansas and the whole United States, of course, that a man is innocent until he is proven guilty?

JUROR BALES: Yes, sir.

Q Do you believe that is a good law?

JUROR BALES: Yes, sir.

Q And do you believe, if selected as a juror in this case, that you could apply that law in this particular case?

JUROR BALES: Yes, sir.

Q Do you believe that although there was evidence that might possibly connect Billy Woodard to this case, if there is any doubt in your mind that you would resolve that in favor --

MR. BURNETT: [Interposing] Your Honor, again I am going to object to the reference of any doubt. That is not a legal test and the Court will so instruct. It is reasonable doubt.

THE COURT: The objection will be sustained.

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BY MR. DABNEY:

Q The Court will properly instruct you later, of course. It is picking hairs and it's reasonable doubt if it will make the prosecutor happy.

JUROR BALES: Yes, sir.

Q And would you resolve any reasonable doubt then in favor of Billy Woodard?

JUROR BALES: Yes, sir.

Q And if there was a reasonable doubt in your mind would you vote to acquit Billy Woodard of this charge?

JUROR BALES: Yes, sir.

Q You could and would do that?

JUROR BALES: Yes, sir.

Q Mr. Johnson, have you talked with anyone who told you that he might be a witness in this case or purported to know anything about this case since it happened?

JUROR JOHNSON: No, sir.

Q Have you read newspaper articles regarding this particular incident?

JUROR JOHNSON: Yes, sir.

Q What papers did you read them in, please, sir?

JUROR JOHNSON: The Commercial Appeal.

Q The Commercial Appeal?

JUROR JOHNSON: Yes, sir.

Q And the articles that you read, did that tend to

cause you to have an opinion one way or the other about the guilt or innocence of the person involved?

JUROR JOHNSON: No, sir.

Q Did you know any of the persons involved?

JUROR JOHNSON: No, sir.

Q Now, Mr. Johnson, a number of the witnesses will be police officers probably in uniform. Does the fact that a police officer testifying on the stand, would you tend to believe him quicker than you would any other witness?

JUROR JOHNSON: No, sir.

Q And you would require the same proof of him that you would of Billy Woodard?

JUROR JOHNSON: Yes, sir.

Q And if the evidence shows beyond a reasonable doubt that Billy Woodard did not commit this crime would you vote to acquit him, would you vote to turn him loose?

JUROR JOHNSON: If he didn't do it.

Q That is right. You understand that the burden is on the State of Arkansas and all of these policemen to prove it to your satisfaction beyond a reasonable doubt, you can and you will do that?

JUROR JOHNSON: Yes, sir.

Q You promise me that?

JUROR JOHNSON: Yes, sir.

MR. DABNEY: Pass them.

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THE COURT: How says the State?

MR. BURNETT: Good.

THE COURT: How says the defense?

MR. DABNEY: Excuse Mr. Martin and Mrs. Payne.

THE COURT: Call two others into the box.

CLERK: Eunice Sitzer, Nathan Harvey.

BY THE COURT:

Q Could each of the two of the last prospective jurors hear the introduction of the parties and a brief statement of the nature of the case from where you were seated in the courtroom?

[REPORTER'S NOTE: Affirmative answer from the prospective jurors.]

Q Are either of you presently represented by any of the attorneys in this case or have you been in the recent past?

JUROR: No, sir.

Q Are either of you personally well acquainted with the defendant, Billy Woodard, or his father, wife or any member of his family?

JUROR: No, sir.

Q Do either of you know of your own personal knowledge anything about the case itself?

JUROR SITZER: Just what I read it in the paper.

Q From what you read in the newspaper, did you at

that time form any opinion as to what had happened or as to the guilt or innocence of the defendant, or do you now hold any such opinion as to the guilt or innocence of the defendant?

JUROR SITZER: No, and I really don't remember what I read too much.

Q And, Mr. Harvey, do you recall having read anything about the occurrence back at the time?

JUROR HARVEY: Well, I remember reading about it. I don't remember the exact time or situation.

Q At that time do you recall whether you formed any opinion about the facts of the case or the guilt or innocence of the one accused of that crime?

JUROR HARVEY: No.

Q Do you now hold any such opinion?

JUROR HARVEY: No.

Q And I believe you are from Weiner, Mrs. Sitzer?

JUROR SITZER: Yes.

Q And your husband's name?

JUROR SITZER: Leonard.

Q Leonard. And he is in the farming business, I believe, is he not?

JUROR SITZER: Yes.

Q Have you had any prior jury service?

JUROR SITZER: Yes, I served on a civil court but I

think it was about nine years, somewhere along in there.

Q That was civil court, you say?

JUROR SITZER: Yes.

Q And, Mr. Harvey, do you have any prior jury service?

JUROR HARVEY: No.

Q Do either of you have any conscientious scruples or fixed beliefs in opposition to the use of the death penalty?

JUROR SITZER: I have some scruples but I don't have a fixed opinion. If the evidence came out I could.

Q What you are saying is that you could and you would under your oath as a juror set aside your own personal beliefs --

JUROR SITZER: [Interposing] Yes.

Q -- and consider the law as instructed by the Court and consider the death penalty if warranted in the case?

JUROR SITZER: Yes.

Q And, Mr. Harvey, did you indicate whether you did or did not have any opposition to the death penalty?

JUROR HARVEY: In extreme cases.

Q In other words you could and would consider the law providing that as an alternative penalty for capital felony murder?

JUROR HARVEY: Yes.

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Q Can each of you, if selected, under your oath as jurors listen to the law as it will be instructed by the Court and listen to the evidence as it is presented during the trial and base your verdict solely and only upon that which you hear during the trial of this case? Can each of you do that?

JURORS HARVEY AND SITZER: Yes.

Q Can you give all parties a completely fair and impartial trial based upon the law and evidence of this case?

JURORS HARVEY AND SITZER: Yes.

Q Do you know of any fact, thing or circumstance whatsoever as to why you feel like you could not or should not serve as a juror in the trial of this case?

JURORS HARVEY AND SITZER: No.

THE COURT: You may inquire further.

BY MR. BURNETT: I have no further questions, Your Honor.

THE COURT: Mr. Dabney?

BY MR. DABNEY:

Q Mrs. Sitzer?

JUROR SITZER: Yes.

Q What newspaper do you subscribe to?

JUROR SITZER: Gazette and Jonesboro Sun and also Modern News.

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Q Do you recall reading newspaper articles of this incident involving Mr. Baker's death in those three papers?

JUROR SITZER: The Jonesboro Sun, I think.

Q Were there pictures accompanying the newspaper articles?

JUROR SITZER: I don't remember a picture.

Q And from the articles that you read did you form any opinion as to the guilt or innocence of the person involved in this particular incident?

JUROR SITZER: No.

Q Did you read anything about the arrest of Billy Woodard?

JUROR SITZER: If I did I have forgotten it.

Q You don't have an opinion one way or the other about his connection with this incident?

JUROR SITZER: No.

Q Now, Mrs. Sitzer, if you are selected as a juror in this case do you believe that you can try this case solely on the evidence as you hear it from the witnesses and the law as given you by the Court?

JUROR SITZER: Yes.

Q Do you believe and agree that it is a good law that a person charged with a crime is innocent until he is proven guilty?

JUROR SITZER: Yes, sir.

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Q Until he is proven guilty beyond a reasonable doubt?

JUROR SITZER: Uh-huh.

Q If selected as a juror will you require that standard of proof on the part of the State?

JUROR SITZER: Yes.

Q Do you believe that the very fact that Billy Woodard is charged with an offense, does that tend to cause you to believe that he may be guilty of it?

JUROR SITZER: No.

Q And right now you have no opinion one way or the other?

JUROR SITZER: No.

Q If there is any doubt in your mind or any reasonable doubt in your mind as to Billy Woodard's guilt or innocence will you resolve that in favor of Billy Woodard?

JUROR SITZER: Yes.

Q And even though there may be some evidence tending to show that Billy Woodard had some knowledge or some involvement and it is not proven to your satisfaction beyond every reasonable doubt, you can and you will vote not guilty?

JUROR SITZER: Uh-huh.

Q Mr. Harvey, you heard the questions that I asked Mrs. Sitzer?

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JUROR HARVEY: Yes.

Q Have you served as a juror before?

JUROR HARVEY: No.

Q And does the fact that someone is charged with a murder, does that so shock your conscienceness that you would have difficulty in bringing in a verdict in his favor?

JUROR HARVEY: No.

Q And if selected as a juror in this case could you and would you try this case solely on the law as given by His Honor and the testimony from the witnesses?

JUROR HARVEY: Right.

Q Now, Mr. Harvey, the fact that there are some police officers that will testify, would you tend to give their testimony any more credence than you would of Billy Woodard?

JUROR HARVEY: No.

MR. DABNEY: Pass them.

MR. BURNETT: Good.

MR. DABNEY: Excuse Mrs. Sitzer.

THE COURT: Mrs. Sitzer, stand down. Call one other.

CLERK: Billy Henry Nelson.

BY THE COURT:

Q Mr. Nelson, did you hear the introduction of the parties and a brief statement of what the case is about from

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where you were seated in the courtroom a moment ago?

JUROR NELSON: Yes, sir.

Q Are you represented by either of these attorneys or have you been in the recent past?

JUROR NELSON: No, sir.

Q Are you personally well acquainted with the defendant, Billy Woodard, or his wife, father or any members of his family?

JUROR NELSON: No, sir.

Q Do you know anything at all about the case of your own personal knowledge other than what you may have read in the papers or heard discussed?

JUROR NELSON: No, sir.

Q Do you recall having read anything about the event back at the time of its occurrence or observing anything over the television or radio?

JUROR NELSON: I read something in the newspaper.

Q From what you read or heard at the time did you then form any opinion as to the facts or issues as to what had happened or the guilt or innocence of the one charged with that crime?

JUROR NELSON: No, sir, sure didn't.

Q Do you now hold any such opinion as to the guilt or innocence of the defendant?

JUROR NELSON: None whatever.

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Q As you now sit do you have an open mind and willing to listen to the law and the evidence and a true verdict render based upon the law and evidence of this case?

JUROR NELSON: Yes, sir.

Q Can you give all parties a completely fair and impartial trial?

JUROR NELSON: Yes, sir.

Q Do you have any conscientious scruples or fixed beliefs in opposition to the imposition of the death penalty?

JUROR NELSON: No.

Q Do you know of any fact, thing or circumstance whatsoever as to why you feel like you could not or should not sit as a juror in the trial of this case?

JUROR NELSON: No, sir.

THE COURT: You may inquire.

BY MR. BURNETT:

Q Mr. Nelson, what is your age, sir?

JUROR NELSON: Twenty-six.

Q And what is your occupation?

JUROR NELSON: I work at rebuilding automobile parts.

Q In Memphis?

JUROR NELSON: Uh-huh.

Q Where is your home?

JUROR NELSON: Lepanto.

MR. BURNETT: Those are all of the questions that

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I have, Your Honor.

THE COURT: Mr. Dabney.

BY MR. DABNEY:

Q Mr. Nelson, you live in Lepanto, I believe?

JUROR NELSON: Yes, sir.

Q And how long have you lived in Poinsett County?

JUROR NELSON: All of my life.

Q What kind of work do you do, sir?

MR. BURNETT: Your Honor, to save time I am going to excuse Mr. Nelson, to save Mr. Dabney time.

THE COURT: Mr. Nelson, you may stand aside.

Call one other into the box.

CLERK: Virginia Ates.

BY THE COURT:

Q Mrs. Ates, did you hear the introduction of the parties and the statement of the case?

JUROR ATES: Yes, sir.

Q Where is your home, please, ma'am?

JUROR ATES: Marked Tree.

Q And your husband's name?

JUROR ATES: I am a widow.

Q Are you employed?

JUROR ATES: Yes, I am. I work for the telephone company.

Q Have you any prior jury service?

JUROR ATES: No.

Q Do you know anything at all about this case of your own personal knowledge other than what you may have read or heard discussed in the community?

JUROR ATES: No.

Q Are you presently represented by any of the attorneys in this case or have you been in the recent past?

JUROR ATES: No.

Q Are you personally well acquainted with the defendant, Billy Woodard, or any member of his family?

JUROR ATES: No.

Q Do you recall having read anything of the events or occurrence back at the time that it happened?

JUROR ATES: Yes.

Q From what you may have read or heard at that time did you form any opinion as to what happened or as to the guilt or innocence of anyone charged with that offense?

JUROR ATES: No.

Q Do you hold any such opinion at the present time?

JUROR ATES: No, sir.

Q If selected can you and will you enter the jury box with an open mind, listen to the law and the evidence and a true verdict render on what you hear during the trial of the case?

JUROR ATES: I believe so, yes.

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Q And give all parties a completely fair and impartial trial?

JUROR ATES: I think so.

Q Do you have any conscientious scruples or fixed beliefs in opposition to the imposition of the death penalty?

JUROR ATES: No.

THE COURT: You may inquire further.

MR. BURNETT: No questions.

THE COURT: You may inquire, Mr. Dabney.

BY MR. DABNEY:

Q Mrs. Ates, have you read newspaper articles regarding --

JUROR ATES: [Interposing] Just what was in the Marked Tree paper.

Q And you realize, of course, that newspapers are made to sell and don't necessarily contain the truth?

JUROR ATES: That is true. All I know is that they found a body. I don't even know who it was.

Q And did this newspaper article so influence you that you would have difficulty serving?

JUROR ATES: No.

Q And do you have an opinion one way or the other about the severity of these charges?

JUROR ATES: No.

Q Now, Mrs. Ates, does the fact that Billy Woodard

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is charged with a capital felony murder, does that so shock you that you would have difficulty in sitting in this case?

JUROR ATES: No.

Q And you indicated to the prosecuting attorney that you would have no hesitancy in bringing in a verdict of the death penalty. I will ask you on the other hand would you have any difficulty in finding him not guilty?

JUROR ATES: I don't believe so, no.

Q And you have been associated with law long enough to know that the burden is on the State?

JUROR ATES: Yes, sir.

Q And will you require the State to carry their burden?

JUROR ATES: Yes, sir.

Q And does the fact that some of these witnesses will be police officers, would that tend to cause you to believe their testimony?

JUROR ATES: Not necessarily.

Q And you would believe Billy Woodard's or any other witness just as quickly?

JUROR ATES: Yes, sir.

MR. DABNEY: Pass.

MR. BURNETT: Good.

THE COURT: How says the defense?

MR. DABNEY: She is good, Your Honor.

THE COURT: Ladies and gentlemen, will you stand and hold up your right hands to be sworn for the trial of the case?

[REPORTER'S NOTE: The jury was duly sworn to try the case.]

* * * * *

THUS ENDS THE VOIR DIRE

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THE STATE OF ARKANSAS]

] REPORTER'S CERTIFICATE

SECOND JUDICIAL DISTRICT]

I, Clyde Still, Official Court Reporter within and for the Second Judicial District of Arkansas, duly qualified, appointed and acting, do hereby certify that the annexed and foregoing pages of typewritten matter contain a true, correct and complete transcript, to the best of my ability, of my stenographic notes taken at the time and place of the above-entitled cause and are a true, correct and complete transcript of all proceedings had and done in the trial of the above-entitled cause in the Poinsett County Circuit Court, sitting in the Third Division thereof.

IN WITNESS WHEREOF, I have hereunto set my hand on this the 14th day of March, 1931.

CLYDE STILL,
Official Court Reporter

CLYDE STILL, R P R
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THE STATE OF ARKANSAS]

] JUDGE'S CERTIFICATE

SECOND JUDICIAL DISTRICT]

AND on this day comes the defendant and presents this, his transcript of testimony, to the Judge hearing said cause and the Judge, after duly examining same, doth sign and approve said transcript of testimony and doth order same be by the Clerk filed and made a part of the record herein.

IN WITNESS WHEREOF, I have hereunto set my hand on this the 14th day of March, 1981.

GERALD PEARSON
Circuit Court Judge

APPENDIX F

STATE OF ARKANSAS)
)
COUNTY OF POINSETT)

AFFIDAVIT

I, Burk Dabney, having been duly sworn according to law, do hereby state on oath that:

I was the court appointed defense counsel for Billy Woodard in his capital felony murder trial in Poinsett County. This act became effective January 1, 1976, and this case was tried in March, 1976. This was the first and only capital felony case that I have tried. I am engaged in the general practice of law.

Because of the fact that this was a fairly recent Act at the time of trial I did not fully realize what types of questioning could be done to rehabilitate a juror that seemed to be disqualified because of opposition to the death penalty.

At the time of the trial on mitigation, I felt severely limited as to the types of evidence that could be put on in the penalty phase because of the wording of the statute. It was my opinion that I was limited to only evidence that dealt with the listed mitigating circumstances. I would have been able to put on testimony concerning Billy's character and what friends thought about him as a person if the statute did not seem to limit what I could do.

IN WITNESS WHEREOF, I have hereunto set my hand on this 16th day of May, 1981.

Burk Dabney
Burk Dabney

Subscribed and sworn to before me this 16th day of May, 1981.

Debra Wright Bell
Notary Public

My Commission Expires: 7-20-82

Opposition

NO. 81-5483

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1981

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BILLY WOODARD PETITIONER

VS

STATE OF ARKANSAS RESPONDENT

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF ARKANSAS

BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION

STEVE CLARK
Attorney General

BY: WILLIAM C. MANN, III
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ATTORNEYS FOR RESPONDENT

NO. 81-5483

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1981

BILLY WOODARD — PETITIONER

VS

STATE OF ARKANSAS — RESPONDENT

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF ARKANSAS

BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION

Respondent, State of Arkansas, responds to petitioner's petition for writ of ceriorari to the Supreme Court of Arkansas.

QUESTIONS PRESENTED FOR REVIEW

I. Whether the Arkansas Supreme Court erroneously interpreted this Court's decision in Dunaway v. New York and improperly permitted the trial court's use of petitioner's confessions which were the "fruit" of an illegal investigatory seizure without probable cause in violation of the Fourth and Fourteenth Amendments.

II. Whether the Arkansas Supreme Court failed to apply the doctrine of Witherspoon v. Illinois and violated the Sixth and Fourteenth Amendments in upholding the trial court's exclusion for cause of death-scrupled veniremen from the jury panel.

III. Whether the Arkansas Supreme Court contradicted this court's recent decision in Estelle v. Smith by permitting the trial court to admit damaging testimony by a reporter concerning admissions during the course of an interview conducted while petitioner was in police custody.

IV. Whether the Arkansas Supreme Court's application of a lesser standard of review to the penalty phase of the trial than to the guilt-innocence phase violated this Court's mandate in Bullington v. Missouri.

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The opinion of the Arkansas Supreme Court denying petitioner's petition to proceed under Rule 37 of the Arkansas Rules of Criminal Procedure is reported at 273 Ark. 235, ___, S.W.2d ___ (1981). The opinion affirming petitioner's conviction on direct appeal is reported at 261 Ark. 895, 553, 5 W.2d 259 (1977). Both are reproduced in petitioner's appendix.

JURISDICTION

The petitioner has adequately set forth the jurisdictional grounds.

CONSTITUTIONAL PROVISIONS AND STATUTORY PROVISIONS INVOLVED

The relevant constitutional and statutory provisions were stated by petitioner.

STATEMENT OF THE CASE

Petitioner's statement of the case, at page nine of his petition, is adequate to apprise the Court of the context in which the issues are presented.

REASONS FOR DENYING THE WRIT

I. THE ARKANSAS SUPREME COURT DID NOT ERRONEOUSLY INTERPRET DUNAWAY V. NEW YORK AND DID NOT IMPROPERLY PERMIT THE TRIAL COURT'S USE OF PETITIONER'S CONFESSIONS, WHICH WERE NOT THE "FRUIT" OF AN ILLEGAL SEIZURE WITHOUT PROBABLE CAUSE IN VIOLATION OF THE FOURTH AND FOURTEENTH AMENDMENTS.

Petitioner initially alleges that the Arkansas Supreme Court misinterpreted this Court's ruling in Dunaway v. New York, 442 U.S. 200 (1979), with regard to the admission of his confessions into evidence at trial. It is his contention that he was seized without probable cause in violation of the Fourth and Fourteenth Amendments and that his confessions were improperly admitted since they were obtained through the exploitation of this illegal seizure.

Petitioner suggests the Arkansas court misunderstood the meaning of Dunaway when it stated, in his Rule 37 proceeding, that it specifically ruled on the voluntariness of the confessions on direct appeal in Woodard v. State, 261 Ark. 895, 553 S.W.2d 259 (1977). However, an examination of the entire context of the Arkansas court's opinion, reported as Woodard v. State, 273 Ark. 235, ___ S.W.2d ___ (1981), indicates that it understood Dunaway.

> Petitioner's first assignment of error is the incriminating confessions allegedly made on October 10 and 11, 1975. He asserts these statements were obtained in violation of his rights under the Fourth, Fifth and Fourteenth Amendments of the United States Constitution. He relies specifically upon the case of Dunaway v. New York, 442 U.S. 200 (1979). Dunaway essentially holds that a Miranda warning is no cure for a voluntary statement given in violation of the Fourth Amendment. In other words, passing the Fifth Amendment test is the threshold for consideration of the Fourth Amendment barrier to such statements. Although petitioner relies on Dunaway, which was decided about the time certiorari was denied in petitioner's case, the Dunaway case was bottomed squarely upon the case of Brown v. Illinois, 422 U.S. 590 (1975). Therefore, this argument would have been as valid on the original appeal as it is at this time. Dunaway and Brown both hold that there must be probable cause to hold a suspect before a statement made by him may be used against him at the trial. This court specifically ruled upon the voluntariness of the confessions in the direct appeal. We also examined the entire record for any overruled objections which might be prejudicial to petitioner and we found none.

> Under the circumstances it seems that this argument is not timely. In any event, the testimony of the officers was that the petitioner voluntarily traveled to the scene of the crime with the deputy and that he was not being held in custody until after he made statements which gave rise to probable cause. We have no quarrel with petitioner's interpretation of Dunaway v. New York, supra. It just simply does not apply to the circumstances and facts of this case. Petitioner was not held until after he made the inculpatory statements.

273 Ark. at 236, 237.

Thus, it is apparent that the Arkansas court did not confuse the voluntariness of the confession, given after the appropriate Miranda warnings under the Fifth Amendment, with the issue of its admissibility under the Fourth Amendment following an allegedly illegal seizure. It merely held that the problems confronting this Court in Dunaway simply did not exist in petitioner's case.

Petitioner contends, as mentioned above, he was seized within the meaning of the Fourth Amendment, without probable cause, and that admitting his confession into evidence violates this Court's ruling in Dunaway, supra. In Dunaway, the facts were that a man was killed during the course of a robbery. The police received a lead implicating the petitioner but learned nothing that supplied enough information to get an arrest warrant. Nevertheless, the officers were ordered to "pick up" the petitioner and bring him to the police station. Although the petitioner was not told he was under arrest, he would have been physically restrained if he had attempted to leave. He was given his Miranda rights and eventually made statements and drew sketches incriminating himself. This Court held that the police violated the Fourth and Fourteenth Amendments when, without probable cause, they seized the petitioner and transported him to the police station for interrogation.

Pursuant to his citation of Dunaway, petitioner contends he did not voluntarily accompany the officers on October 10, 1975, and, like Dunaway, he was not free to walk away from the police. Therefore, he contends Dunaway controls his case.

Respondent would note initially that the Arkansas Supreme Court cited testimony in its opinion on direct appeal which refutes petitioner's contention that he did not voluntarily accompany the officers.

> Deputy Findley testified that on October 10 he stopped appellant's truck and asked him if he would come to the sheriff's office, and appellant complied with the request. According to Findley, Odom read appellant his constitutional rights and appellant indicated he understood them. Findley further testified there were no threats, coercion or promises of lenient treatment made to appellant. In addition, Findley denied he or Odom told appellant it would be best for him to make a statement. According to Findley when he, Odom and appellant arrived at the crime scene Odom again advised appellant of his constitutional rights. Contrary to the claims of appellant, Findley denied he physically mistreated appellant. In response to questions by the trial court, Findley denied he or Odom told appellant "if he would sign a confession that he had the easiest out in the world and that [they] would see that he got medical help."
>
> The trial court found appellant was informed of his constitutional rights, that he knowingly and intelligently waived his right against self-incrimination and that the statement was made voluntarily. We find that the trial court's determination of voluntariness was not "clearly erroneous." Neal, supra, and Degler, supra.

261 Ark. at 900, 901.

Respondent respectfully submits that petitioner was merely cooperating with the police officers and was not coerced by physical force nor show of authority. Petitioner consented to answering questions, after being advised of his Miranda rights, and this factor distinguishes his case from Dunaway. In reviewing its previous decisions in the Dunaway opinion, this Court cited United States v. Brignoni, 422 U.S. 873 (1975), wherein it was said:

> The officers may question the driver and passenger about their citizenship and immigration status, and he may ask them to explain suspicious circumstances, but any further detention or search must be based on consent or probable cause. (Emphasis added)

422 U.S. at 881, 882.

Thus, this Court said consent or probable cause must exist. The question of whether petitioner's consent to accompany the police was voluntary or was the product of duress or coercion, express or implied, is to be determined by the totality of the circumstances. Schneckloth v. Bustamonte, 412

U.S. 218 (1973). Not all personal intercourse between the police and citizens involves seizures of persons. Only when the officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen will this Court conclude that a "seizure" has occurred. Terry v. Ohio, 392 U.S. 1, 19 N. 16 (1968). It is apparent that a citizen may voluntarily accompany a police officer for questioning in a "spirit of cooperation." Sibron v. New York, 392 U.S. 40 (1968). This Court reaffirmed this principle and indicated part of the rationale behind it in United States v. Mendenhall, 446 U.S. 544, 554 (1980), wherein it was said:

> Moreover, characterizing every street encounter between a citizen and police as a "seizure", while not enhancing any interest secured by the Fourth Amendment, would impose wholly unrealistic restrictions upon a wide variety of legitimate law enforcement practices. The Court has on other occasions referred to the acknowledged need for police questioning as a tool in the effective enforcement of the criminal laws. "Without such investigation, those who were innocent might be falsely accused, those who were guilty might wholly escape prosecution, and many crimes would go unsolved. In short, the security of all would be diminished. Haynes v. Washington, 373 U.S. 503, 515." Schneckloth v. Bustamonte, 412 U.S. at 225.

> We conclude that a person has been "seized" within the meaning of the Fourth Amendment only if, in view of all of the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave. Examples of circumstances that might indicate a seizure, even where the person did not attempt to leave, would be the threatening presence of several officers, the display of a weapon by an officer, some physical touching of the person of the citizen , or the use of language or tone of voice indicating that compliance with the officer's request might be compelled. See Terry v. Ohio, supra, at 19, n. 16; Dunaway v. New York, 442 U.S. 200, 207, and n. 6; 3 W.LaFave, Search and Seizure 53-55 (1978). In the absence of some such evidence, otherwise inoffensive contact between a member of the public and the police cannot, as a matter of law, amount to a seizure of that person. (Footnotes omitted)

It is interesting to note the facts of Mendenhall. The respondent was observed by two agents of the Drug Enforcement Administration (DEA) as she disembarked from an airplane at the Detroit Airport. According to the agents, the respondent's conduct appeared to be characteristic of persons unlawfully carrying narcotics. The agents approached respondent and asked to see her airline ticket (listed under

another name) and her identification, which she produced. One of the agents asked if she would accompany them to the airport DEA office for further questions, which she did. In the office, respondent replied, "Go ahead," in response to a request to allow a search of her person and handbag (she was told she had the right to decline). A policewoman then conducted a search of respondent's person after determining that she consented. In rejecting respondent's arguments that a seizure occurred, this Court said:

> Our conclusion that no seizure occurred is not affected by the fact that the respondent was not expressly told by the agents that she was free to decline to cooperate with their inquiry, for the voluntariness of her responses does not depend upon her having been so informed. See Schneckloth v. Bustamonte, supra. We also reject the argument that the only inference to be drawn from the fact that the respondent acted in a manner so contrary to her self-interest is that she was compelled to answer the agents' questions. It may happen that a person makes statements to law enforcement officials that he later regrets, but the issue in such cases is not whether the statement was self-protective, but rather whether it was made voluntarily.

446 U.S. at 555, 556.

Petitioner terms October 10, 1975, as his crucial encounter with the police. As stated, supra, in a portion of the testimony referred to in the Arkansas Supreme Court's opinion on direct appeal, the officers asked petitioner if he would come to the sheriff's office and petitioner complied. There was no force or show of authority involved.

Therefore, the Arkansas Supreme Court properly interpreted the Court's decision in Dunaway and petitioner's argument must fail.

> [Note: Respondent would correct one misstatement of fact in petitioner's brief. Petitioner asserts at page twenty-eight of his brief that one of the officers admitted they would "have kept petitioner there all night" if necessary to get a confession. Two of the transcript references listed are T. 131, 132. Respondent notes that these two pages are a portion of petitioner's own testimony, not that of a police officer.]

II. THE ARKANSAS SUPREME COURT DID NOT FAIL TO APPLY THE DOCTRINE OF WITHERSPOON V. ILLINOIS AND THE TRIAL COURT DID NOT ERRONEOUSLY EXCLUDE DEATH-SCRUPLED VERNIREMEN FROM THE JURY PANEL IN VIOLATION OF THE SIXTH AND FOURTEENTH AMENDMENTS.

Petitioner next raises an issue which was not raised on direct appeal and rejected by the Arkansas Supreme Court in petitioner's Rule 37 proceeding. He contends that the Arkansas court misconstrued the proper standard for excluding jurors for cause in capital cases. He maintains that the trial court failed to ascertain whether "death-scrupled" verniremen could abide by the law and obey their oaths as jurors. He specifically mentions jurors Bishop, Parker, Young and Hobbs as examples of the trial court's alleged failure to question the prospective jurors sufficiently on voir dire. He also complains that the trial court left the impression with the prospective jurors that the death penalty was necessary in some cases in Arkansas. An examination of the material parts of the record, found in petitioner's appendix, reveals that petitioner's argument is without merit and that the trial court acted properly in explaining the possible punishments to the jurors and is excluding the jurors mentioned above.

Pages twenty-three through twenty-seven and page thirty-one of the voir dire, attached as Appendix A to respondent's brief, demonstrate that the jury was informed that there are two possible punishments for capital murder and that death was not mandatory nor necessary. When these pages of the record are read in full and together, it is clear the prospective jurors were not misled into believing the death penalty was mandatory in some cases.

It is also necessary to examine the record in order to see that each of the four jurors petitioner lists were properly excluded. Juror Hobbs was excused after the following exchange at page twenty-eight of the voir dire:

Q. Mrs. Hobbs?

JUROR HOBBS: No, I couldn't return a death penalty.

Q. You could not and would not under your oath consider the law of the State of Arkansas? In other words, your personal feelings would override the laws of the State of Arkansas --

JUROR HOBBS: [Interposing]: The death would.

Q. -- and return a verdict carrying with it the death penalty?

JUROR HOBBS: No, Sir, I could not.

THE COURT: Do you submit her?

MR. BURNETT: Yes, sir.

THE COURT: You may stand aside, Mrs. Hobbs.

* * *

Juror Bishop was excused following questioning at T. 58, 59:

Q. If based upon the law and evidence of this case and you were convinced and believed beyond a reasonable doubt that the defendant was guilty as charged, would you have any hesitancy or reluctance on your part to return a verdict of guilty?

JUROR BISHOP: Well, sir, I would if it is a death penalty.

Q. What I was referring to, Mr. Bishop, in other words, you are working daily with Mr. Woodard. (referring to defendant's father) Could you face him and would your friendship be affected or would it worry you or concern you in returning a verdict thinking, well, what am I going to tell Mr. Woodard tomorrow when I see him at work? Would that bother you at all?

JUROR BISHOP: Well, sir, I will put it this way: If it was the death penalty it sure would.

Q. I take it then, Mr. Bishop, from what you say it is your view and belief that irrespective of what the law of the State of Arkansas provides you could not and would not as a juror consider the death penalty

or return a verdict that carries with it the death penalty?

JUROR BISHOP: No, sir.

Q. You just could not and would not consider the law?

JUROR BISHOP: I just don't believe in it that way.

MR. BURNETT: I will submit him, Your Honor.

THE COURT: You may stand down, Mr. Bishop.

JUROR BISHOP: I am sorry. I just don't believe in that.

* * *

Juror Parker was excused at T. 67 as follows:

Q. Mr. Parker?

JUROR PARKER: Yes, I couldn't bring in a murder. I couldn't send him to the chair. I could not.

Q. In other words, you could not and would not --

JUROR PARKER: [Interposing] No, sir.

Q. -- if selected as a juror be able to lay aside you own personal beliefs and consider the death penalty under the laws of the State of Arkansas?

JUROR PARKER: No, I could not.

THE COURT: Do you submit him, Mr. Burnett?

MR. BURNETT: Yes.

THE COURT: Mr. Parker, I will permit you to stand aside with the thanks of the Court.

* * *

Finally, juror Young was excused after the following exchange at T. 80, 81:

Q. Can you, if selected as a juror in the trial of this case, Mr. Young, listen very carefully to the evidence, the instructions of the law and base your verdict on the law and the evidence of this case? Can you do that, sir?

JUROR YOUNG: Yes, sir.

Q. Can you give all parties a completely fair and impartial trial?

JUROR YOUNG: Yes, sir, but I don't believe in the death penalty like the other fellow.

Q. Do I understand then that you do have some conscientious scruples or fixed beliefs in opposition to the death penalty?

JUROR YOUNG: Yes, sir.

Q. Is that such an opinion that you could not lay it aside and consider the law of the State of Arkansas which gives the option to imprisonment or the death penalty.

JUROR YOUNG: That is right.

Q. You would not lay that aside and would not consider --

JUROR YOUNG: (Interposing] No, sir.

Q. -- the death penalty and you would not return any verdict which carried with it the death penalty?

JUROR YOUNG: No, sir.

THE COURT: I will permit you to stand aside with the thanks and appreciation of the Court, Mr. Young.

* * *

In examining the portions of the voir dire transcript set out above, it is difficult to imagine how the jurors could have been any clearer in stating that they would not obey their oaths and the laws of Arkansas. The cases cited by petitioner are distinguishable from his case in that the jurors did not state in as clear terms that they could not obey their oath. For example, in Boulden v. Holman, 394 U.S. 478 (1969), the following Alabama statute was involved:

> On the trial for any offense which may be punished capitally, . . . it is a good cause of challenge by the state that the person has a fixed opinion against capital punishment. . .

394 U.S. at 481.

Eleven veniremen appeared to have been excused for cause simply on the basis of their affirmative answers to the question whether, in the statutory language, they had a

fixed opinion against capital punishment.

In Adams v. Texas, 448 U.S. 38 (1980), the trial judge excused a number of jurors who were unwilling or unable to take the oath in the following Texas statute:

> Prospective jurors shall be informed that a sentence of life imprisonment or death is mandatory on conviction of a capital felony. A prospective juror shall be disqualified from serving as a juror unless he states under oath that the mandatory penalty of death or imprisonment for life will not affect his deliberations on any issue of fact.

These cases did not involve situations where clear, unequivocal responses were elicited from the prospective jurors, as in petitioner's case. Therefore, respondent respectfully submits that, after examining the voir dire transcript, it is clear the trial judge properly excluded the aforementioned jurors pursuant to Witherspoon v. Illinois, 394 U.S. 510 (1968).

III. THE ARKANSAS SUPREME COURT DID NOT RULE IN CONTRADICTION TO THIS COURT'S RULING IN ESTELLE V. SMITH.

Petitioner next argues that allowing a reporter who interviewed him to testify on rebuttal violated his constitutional rights. He speculates that the reporter may have been an agent of the state and contends that allowing the testimony violated this Court's ruling in Estelle v. Smith, ___ U.S. ___, 68 L.Ed.2d 359, 101 S.Ct. 1866 (1981). This contention is without merit.

Respondent would initially respond by citing the Arkansas Supreme Court's opinion denying petitioner relief pursuant to Rule 37 of the Arkansas Rules of Criminal Procedure. There the court held that petitioner was not in custody until after he made inculpatory statements. Therefore, the situation is distinguishable from Estelle and Evalt v. United States, 359 F.2d 534 (9th Cir. 1966), also cited by petitioner.

A review of the essential facts reveals that Fugate, the reporter, testified that he was present when the officers took petitioner to the ditch bank or floodway in Poinsett County and that he observed petitioner sitting on the bank

while officers searched the ditch. This occurred after Fugate received confidential information (T. 694-695) and followed the officers from the jail to the levee. Fugate testified that his purpose for being there was to obtain information to report in the news (T. 695) and that he "had several exchanges" with petitioner, "briefly or sporadically over a period of several hours." (T. 694) Fugate also overheard some of the admissions petitioner made to Sheriff Crawford. (T. 695) Fugate later approached petitioner and got him some aspirin after petitioner indicated he had a headache and asked Fugate if he had any aspirin. Petitioner then proceeded to give Fugate details of the murder, including the number of times the victim was shot, the type of gun that was used, and the color of the victim's billfold. Fugate also testified that petitioner "at no time told me directly that he shot Mr. Baker." (T. 696-697)

Fugate testified that petitioner was "reluctant" to talk to him (T. 697) and stated on cross-examination that most of the information he obtained was by overhearing remarks made to Sheriff Crawford or Deputy Sheriff Walker. (T. 698)

Petitioner did not confess to Fugate that he committed the crime, and the statements he made to Fugate were much less incriminating than those he gave to the police. There is absolutely nothing in the record to indicate that the police had anything to do with Fugate's presence at the scene or with his decision to interview petitioner.

Petitioner's case is distinguishable from Estelle. The psychiatrist in Estelle clearly came into contact with the defendant at the direction of the State. The Court ordered the State's attorney to arrange an examination of the defendant by the psychiatrist. This encounter is entirely different from that in the present case. Indeed, this Court stated in Estelle:

> Thus, absent other fully effective procedures, a person in custody must receive certain warnings before any official interrogation, including that he had a "right to remain silent" and that "anything said can and will be used against the individual in court." (Emphasis added) 68 L.Ed.2d at 371.

It should be noted that petitioner had been advised of his Miranda rights before accompanying the officers. Therefore, he was aware he did not have to talk with anyone.

Petitioner's citation of Evalt, supra, is of no benefit to him. In Evalt, the reporters had the permission of the Sheriff to interview the petitioner. In addition, the petitioner was kept under guard by a deputy sheriff during the interview. The setting in Evalt was thus different from the present case. The officers in Evalt apparently allowed the formal interview. Petitioner merely offers speculation that reporter Fugate was in any way involved with the state. Therefore, the testimony was properly admitted and petitioner's constitutional rights were not violated.

IV. THE ARKANSAS SUPREME COURT DID NOT APPLY A LOWER STANDARD OF REVIEW TO THE PENALTY PHASE OF PETITIONER'S TRIAL THAN IT APPLIED TO THE GUILT-INNOCENCE PHASE AND DID NOT VIOLATE THIS COURT'S DECISION IN BULLINGTON V. MISSOURI.

Petitioner argues finally that the Arkansas Supreme Court applied a lesser standard of review to the penalty phase of his trial than it did to the guilt-innocence phase. He contends the Arkansas court therefore ran afoul of this Court's ruling in Bullington v. Missouri, ___ U.S. ___, 68 L.Ed.2d 270, 101 S.Ct. 1852 (1981), which held that the protection of the double jeopardy clause of the Fifth Amendment applies to a person convicted of capital murder and sentenced to life imprisonment by the jury, with respect to the death penalty, at his retrial. The reasoning behind the decision, as stated by this Court, was because the sentencing proceeding at petitioner's first trial was like the trial on the question of guilt or innocence.

Respondent would note initially that petitioner has demonstrated no error in the standard of review of the penalty phase exercised in his appeal. Respondent contends that the Arkansas Supreme Court applied the proper standard of review in petitioner's case. The standard of review, with respect to the death penalty, in capital cases was stated by the Arkansas Court in Collins v. State, 261 Ark. 195, 221, 548 S.W.2d 106 (1977), decided the same year as petitioner's direct appeal:

> There is a meaningful appellate review by this court of the appropriateness of the death penalty in a particular case, considering both the punishment and any errors on points raised in the trial court, including the sufficiency of the evidence to support any part of the jury verdict. This appellate review includes: (1) a determination whether the sentence was the result of passion, prejudice or any arbitrary factor; (2) whether the evidence supports the jury's finding of any statutory aggravating circumstances; (3) whether the evidence supports the jury's finding on the question whether mitigating circumstances outweigh aggravating ones; (4) whether the sentence is excessive. On appellate review, this court can reduce the sentence, or grant a new trial, in its discretion, if the sentence is excessive or there is error affecting the sentence only, or where there is insufficient evidentiary support for the sentence. Of course, the exercise of discretion by the trial judge is always subject to review for abuse. The "freak" or disparate death sentence would certainly warrant reversal or reduction as shocking to our sense of justice.

Respondent also contends that a reading of the entire context of the Arkansas Supreme Court's decision in Miller v. State, 269 Ark. 341, 605 S.W.2d 430 (1980), reveals that the Arkansas court employed the proper standard. The Court said:

> In this case, there were in the jury room twelve average citizens, not trained in the law, who were required to say whether or not each of seven rigidly described aggravating circumstances existed. The jurors answered the questions, unanimously, as best they could. One of the reasons these statutes were enacted was to give this court an insight to the thought process of the jury so that we can compare the circumstances of cases involving the death sentence in our effort to avoid any arbitrary and unconstitutional application of the sentence. We do not consider the jury's findings as separate little verdicts, and we do not require the same degree of proof to sustain a jury finding that an aggravating or mitigating circumstance exists as we would require to sustain a conviction if that circumstance was a separate crime.
>
> It is a matter of judgment whether the facts support the findings of the jury of aggravating and mitigating circumstances, but we will not substitute our judgment for the judgment of the jury that heard the evidence if there is a reasonable and understandable application of the facts to the statutory circumstances. The basic issue is whether, on the evidence, the jurors could sincerely and honestly have made the finding as they understood the question. If their answer to a question had been wholly arbitrary, a different problem would confront us. But here their answers were not arbitrary. We have before us a record of all the evidence presented to the jury to help us decide whether this jury acted capriciously in imposing the death sentence. We can put ourselves in the jurors' position and understand what they meant

> by answering the interrogatories as they did. That we might have interpreted an interrogatory differently does not require us to set aside a death sentence that was deliberately and conscientiously agreed upon by the persons who had the advantage of hearing the testimony as it was given.

269 Ark. at 354, 355.

Petitioner's argument on this point was also rejected in Miller v. State, slip opinion delivered September 29, 1981. (See Appendix C)

Thus, respondent respectfully submits that petitioner has failed to demonstrate that the Arkansas Supreme Court employed an improper standard of review in the penalty phase of his capital murder trial. The Arkansas Court did not violate this Court's ruling in Bullington, hence, petitioner's argument must fail.

CONCLUSION

Rule 17.1 of the Rules of the Supreme Court states that review on writ of certiorari will only be granted when there are special and important reasons therefore. Subsection (C) provides that such writs will be granted when a state court has decided a federal question in a way is conflict with applicable decisions of this Court or if it has decided an important question of federal law which has not been, but should be, settled by this Court.

Although respondent recognizes that review on writ of certiorari is discretionary, and that the Court is not bound by the guidelines of Rule 17.1(c), it respectfully submits that the Arkansas Supreme Court has followed the applicable decisions of this Court and has properly denied petitioner relief in both his direct appeal and Rule 37 proceeding.

Therefore, for these reasons and for the reasons and authorities cited in respondent's brief in opposition to the petition for writ of certiorari, respondent respectfully prays that this Court deny review on writ of certiorari.

Respectfully submitted,

STEVE CLARK
Attorney General

BY: William C. Mann III
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Little Rock, Arkansas 72201

CERTIFICATE OF SERVICE

I, William C. Mann, III, Assistant Attorney General, do hereby certify that I have served petitioner by placing three copies of the above and foregoing plead in the United States Mail, postage prepaid, addressed to Mr. Reed E. Hundt, 1333 New Hampshire Avenue, N.W. Washington, D. C. 20036, and Mr. Thomas M. Carpenter, 807 West Third Street, Little Rock, Arkansas, 72201, Attorneys of Record for Petitioner, this 21ST day of October, 1981.

William C. Mann III
WILLIAM C. MANN, III

APPENDIX "A"

[REPORTER'S NOTE: Affirmative response from prospective jurors in the box.]

THE COURT: Mr. Burnett?

MR. BURNETT: Yes, sir.

THE COURT: Is the State waiving the death penalty in this case?

MR. BURNETT: No, sir.

THE COURT: Is the State then seeking the death penalty?

MR. BURNETT: Yes, sir.

BY THE COURT:

Q In that respect then, ladies and gentlemen, let me ask you this: Do any of you have any conscientious scruples or fixed beliefs in opposition to the use of the death penalty in a proper case?

JUROR REDD: What do you call a proper case, Your Honor?

Q In this or any case, do you have any conscientious scruples or beliefs in opposition to the use of the death penalty?

JUROR REDD: I don't believe in taking another person's life.

Q Let me ask it this way: Could you and would you, if selected as a juror in the trial of this case, under your oath as a juror, consider the death penalty as a proper

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penalty in this or any case?

JUROR REDD: I don't know, Your Honor.

Q Mr. Redd, of course, you and you alone are the only one that knows what your beliefs or your opinions are. The Court cannot delve into your mind. Let me ask you this, Mr. Redd, as well as all of the rest of the jurors: If you are selected as a juror for the trial of this case you will be entrusted, under your oath as a juror, with two distinct responsibilities. First, under your oath and based upon the law and evidence of the case, you must determine whether or not Bill Woodard is guilty or innocent of capital felony murder. Secondly, if you find that he is guilty then it will be your duty under your oath as a juror to follow the laws of the State of Arkansas to determine whether or not his sentence should be one of imprisonment or of death. If you are selected as a juror for the trial of this case, can you and will you be able to lay aside any personal views, opinions or beliefs which you may hold regarding the death penalty and make the discretionary judgment entrusted to you as a juror and thus obey and uphold your oath as a juror and follow the laws of the State of Arkansas by considering, and if the law as instructed by the Court and the evidence justified, vote to return a verdict which carries with it the death penalty? Could you do that?

JUROR REDD: I don't know, Your Honor.

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932-3013

Q Mr. Bonham, what was your response or answer to that question? Could you and would you under your oath as a juror be able to lay aside any personal beliefs or opinions that you might hold concerning capital punishment and if the law and the evidence justified consider a verdict which carries with it the death penalty if you thought that was the just and proper verdict in the case return a verdict which carries with it the death penalty? Could you do that?

JUROR BONHAM: Well, sir, I don't know. I really don't believe in taking another man's life. I would have to say that. Possibly in some cases, I don't know. I mean it would depend on what someone -- I just don't know. If it comes to that point I would have to say I would be undecided. I don't know.

Q Let me ask you this, Mr. Bonham. Is it your position that if selected as a juror in the trial of this case that you could not consider and could not, as a juror, return a verdict which carried with it the death penalty?

JUROR BONHAM: Well, I maybe would consider.

Q Mr. Redd, let me ask you this, sir, and I don't want to belabor the point. Is it your view or position, Mr. Redd, that you could not or would not as a juror be able to consider the death penalty if that is the law of the State of Arkansas as you are instructed under your oath? In other words, could you consider that as a penalty for capital

felony murder?

JUROR REDD: I could consider it, Your Honor, but I don't know whether my conscience would let me do it or not.

Q Are you saying that you could not or would not return a verdict carrying with it the death penalty or that you just simply don't know?

JUROR REDD: I just don't know.

Q Mr. Goad, do you have any conscientious scruples or fixed beliefs in opposition to the use of the death penalty?

JUROR GOAD: Mister, I just flat don't know when it really comes right down to it.

Q If you are accepted as a juror in the trial of this case, Mr. Goad, as a juror and under your oath you will have two distinct responsibilities to discharge. First, you, as a juror, must make a decision as to whether or not the defendant, Billy Woodard, is guilty or not guilty of capital felony murder, that is the commission of a murder in the perpetration of a robbery. Secondly, if you find the defendant guilty then it would be your duty under your oath to follow the law of the State of Arkansas and to determine whether or not the proper sentence in this case is one of imprisonment or of death by electrocution at the hands of the State. If you are selected as a juror for the trial of this case can you and will you be able to consider the law

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of the State of Arkansas providing for the death penalty, consider the death penalty as a proper verdict, and if you feel that is the true verdict return a verdict which carries with it the death penalty?

JUROR GOAD: I just don't know.

Q Mr. Raney, do you have any conscientious scruples or objections to the death penalty?

JUROR RANEY: Your Honor, when I think that it would prove beyond a doubt that he is guilty I would have to go along with the verdict of the State.

Q You would and could consider the laws of the State of Arkansas and consider that as a penalty along with imprisonment, of course?

JUROR RANEY: If that be the just thing.

Q I want to make it plain and clear to you that you are not under any obligation and your oath doesn't tell you to return a verdict providing for the death penalty. But if you find him guilty you have got to either decide whether imprisonment or the death penalty is the proper penalty.

Again, my only question is, can you lay aside any personal beliefs and consider the law and, if necessary, return a verdict carrying with it the death penalty?

JUROR RANEY: I could.

Q You could and would do that, I take it?

JUROR RANEY: I think so.

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scruples or fixed beliefs in opposition to the use of the death penalty?

JUROR DUFFELL: Well, a lot of things would depend upon that.

Q I realize that and that is the whole matter, Mr. Duffell. The only question is, if you were selected as a juror in the trial of this case your oath requires you to uphold and follow the law as instructed by the Court, that law giving the jury the alternative or option of fixing the penalty in the event they first, of course, find him guilty of capital felony murder. The jury must fix the penalty, that penalty under the law being either imprisonment or death by electrocution. Could you follow the law and the evidence in this case and consider death by electrocution as a penalty?

JUROR DUFFELL: I could consider it.

Q Could you, if justified, return a verdict which carried with it the death penalty?

JUROR DUFFELL: I don't really know.

Q In other words, some jurors say, I have a conscientious scruple against the death penalty. I don't care what the law of the State of Arkansas is, I don't care what the facts in any case is, I am not as a juror under my oath or otherwise going to follow that law if it requires me to consider the death penalty as a penalty for this crime. And

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DIRECT EXAMINATION

BY MR. BURNETT:

Q Will you state your name, please, for the record?

A Larry Fugate.

Q And what is your occupation?

A I am associate editor of the Jonesboro Sun in Jonesboro.

Q Mr. Fugate, you were just sworn by the Court I believe?

A Yes, sir.

Q All right. Mr. Fugate, directing your attention to sometime around the 10th of October of 1975, in your capacity as a news reporter for the Jonesboro Sun, did you have an occasion around that date -- and you can specify when it was -- to be present at a ditch bank in the floodway area in Poinsett County and observe a search by officers of the Poinsett County sheriff's office and others?

A I did, sir, on the morning and afternoon of October the 11th, 1975.

Q And what was the nature of that search?

A The officers, accompanied by the defendant --

Q (Interposing) Are you speaking of the defendant here, Billy Woodard, by Mr. Dabney?

A That is correct. The officers and Mr. Woodard went to a location approximately one mile east, northeast of Payneway in Poinsett County, and a number of the officers

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Sheriff Crawford, Deputy Doyle Hillis, Deputy Billy Reese, former Deputy Jim Walker, one other deputy, I don't know his name, and later a Lieutenant from the Trumann Police Department, Bobby New, entered into the water of this ditch and conducted a search.

Q And where was the defendant at this time?

A At the time that they were in the water?

Q They were in the water?

A The defendant was sitting on the north bank of the cut end of this levee ditch.

Q All right. Was he directing the efforts of the officers in the water?

MR. DABNEY: If Your Honor please, I am going to -- will you ask him to rephrase that question?

Q (By Mr. Burnett) I will just state it like this, Mr. Fugate. Did you have a conversation with Mr. Billy Woodard, the defendant?

A I don't know whether I would clarify it as a discussion. I had several exchanges, briefly or sporadically over a period of several hours there.

Q All right. Tell me if you will then what you saw the defendant do at that scene and what he said to you.

A Well, he -- actually, I need to back up a little bit. I developed some information from a confidential source the evening of October 10, 1975, and as a result of that

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information, I went to the county jail in Harrisburg on the morning of October the 11th. I followed Sheriff Crawford and the defendant when they left the County jail and proceeded to Payneway, other deputies joining at a cafe and a motel, I think it is called either McCrarey's or McClartey's Motel. I was accompanied by Paul Holmes from Jonesboro, who is a reporter for KAIT-TV. The police car stopped on a levee about a mile east, northeast of Payneway and the officers and Mr. Holmes and myself followed the defendant down to what I call a cut in this bank. Apparently stock use it for feeding because there was evidence that cattle had been down there. The defendant discussed something with Sheriff Crawford that I could not hear or understand. And then he told Sheriff Crawford, in my presence, that he threw a billfold, a pair of shoes, and three expended shotgun shells into the water, which was identified to me as a side ditch of the river. As a direct result of the defendant's instructions Officers entered the water and searched the water for a period of two to three hours while we were there.

Q Your purpose of being there was to obtain information to report in news?

A Yes, sir.

Q Go ahead and tell what the defendant's conversation -- if

any that you had with the defendant.

A I approached the defendant at one point while the officers were in the water and tried to strike up a conversation with him and he didn't seem to want to talk with me so I just let it drop. At a later point, I approached him, when I say approached him, most of the time we were not separated by more than ten or twenty feet. He was sitging on the north side of the bank cut. I talked to him briefly. I think we talked about the weather or something. It was warm and the mosquitoes were bothering us. He indicated to me that he had a headache and wanted to know if either I or anyone else had any aspirin. I obtained the keys to the car from Deputy Walker's car and checked the first-aid kit in the trunk. There were no aspirins in it. I either asked -- I think I asked Doyle Hillis, who was going back to Payneway, to obtain a dip net to stop and see if he could get some aspirin for the defendant. Doyle brought some back in a -- wrapped in a paper napkin, maybe eight or ten. I gave the defendant several aspirin and he consumed them. I gave him the rest of the aspirin wrapped in the napkin. He stuck them in his shirt pocket. A short time later, I asked the defendant how many times Mr. BAker was shot. He said three times. I asked him what type of weapon was used and he said a twelve gauge pump shotgun. The defendant —

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Q (Interposing) That was the defendant telling you this?

A Yes, sir. The defendant at no time told me directly that he shot Mr. Baker. I asked him about the billfold of Mr. Baker, I believe he said it was black. He said that after he threw the shotgun shells and the shoes and the billfold into the water, he went up on a little hill or clump up north of the cut and slightly west of it and sat there for a while saying something to the effect of what have I done.

Q He was telling you this?

A Yes, sir. And at a later point the defendant asked me if I thought he was mentally unbalanced. And that, again, in substance is the conversation or exchange or whatever you might call it occurred over a period of at least an hour. It was sporadic or broken. I might ask him a question and he might respond and he might not make any other comments to me or I might not direct any to him for thirty minutes.

Q Mr. Fugate, there was no one there treating him harshly? No one there threatening him and he volunteered this conversation to you, a complete stranger; what have I done? Three shots of a shotgun and a black billfold?

A I won't say he volunteered it. He, of course, was at first reluctant to talk to me at all and the rest of the time he was just -- at best reluctant.

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MR. DABNEY: If Your Honor please, I object to leading.

THE COURT: Avoid leading.

Q (By Mr. Burnett) After you started talking to him, did he talk to anybody that came up or around?

A Yes, sir, he talked to Jim Walker.

Q Did he tell him any details about this crime?

A Jim Walker? I don't honestly remember what he said to Jim. They were talking for some time. Part of the time they were a distance away from me.

oOo

CROSS EXAMINATION

BY MR. DABNEY:

Q Larry, you weren't there for an interview with Billy Woodard and he didn't propose to give you one, did he? You were there to gather what news you could, of course?

A That is correct, sir.

Q Most of the information that you got from Billy Woodard was overhearing remarks that he made to Sheriff Crawford or Deputy Walker except to those instances that you told us about?

A That would be correct, sir.

MR. DABNEY: I believe that is all.

THE COURT: You may stand down. Call your next.

MR. BURNETT: Call Bill Findley.

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APPENDIX "C"

SUPREME COURT OF ARKANSAS

No. CR 79-80

Opinion Delivered September 28, 1981.

EDDIE LEE MILLER,

Appellant,

V.

STATE OF ARKANSAS,

Appellee.

Petition under Criminal Procedure Rule 37.2 for permission to file a petition for postconviction relief in the Crittenden Circuit Court.

Petition denied.

GEORGE ROSE SMITH, Associate Justice

GEORGE ROSE SMITH, J. In November, 1978, the petitioner was convicted of capital felony murder in the death of W.F. Bolin, a storekeeper whom Miller robbed and then, as the jury evidently believed, murdered to remove Bolin as a possible witness to the robbery. We affirmed the sentence of death. Miller v. State, 269 Ark. 341, 605 S.W. 2d 430 (1980), cert. den. ____ U.S. ____ (1981). Miller now seeks postconviction relief under Criminal Procedure Rule 37.2.

Rule 37.2 provides that if a criminal conviction has been appealed to this court, postconviction proceedings in the trial court cannot be maintained without the prior permission of this court. Here, however, Miller does not seek any further hearing in the trial court; he merely presents constitutional arguments based upon the record on the original appeal. It is not the purpose of Rule 37.2 to provide a substitute for appeal, an alternative method of reviewing mere errors in the conduct of the trial, or an opportunity for a belated petition for rehearing. Neal v. State, 270 Ark. 442, 447, 605 S.W. 2d 421 (1980); Hulsey v. State, 268 Ark. 312, 595 S.W. 2d 934,

599 S.W. 2d 729 (1980), cert. den. 499 U.S. 938 (1980). We therefore need not discuss all the arguments in the present petition. Hulsey, supra.

Two related arguments are directed to the qualification of the jury. First, it is contended that the trial judge excused for cause three jurors who were not unequivocally opposed to considering the imposition of the death penalty. The original record shows, however, that each of the three was properly excused under the doctrine of Witherspoon v. Illinois, 391 U.S. 510 (1968): Juror Vogel, record p. 240; Juror Washington, record pp. 245 and 247; Juror Whitehead (Heard), record pp. 334-336.

Second, a related argument is that the veniremen should also have been examined to determine whether they could even find the defendant guilty, because a statute has recognized implied bias when a juror entertains such conscientious opinions as would preclude him from finding the defendant guilty of an offense punishable by death. Ark. Stat. Ann. § 43-1920 (7) (Repl. 1977). That statute was adopted in 1869, when the death penalty was mandatory for certain offenses, such as first-degree murder and rape. But in 1915 the legislature gave juries the option of imposing life imprisonment in all capital cases; so the existence of implied bias necessarily shifted from the mere finding of guilt to the imposition of the death penalty. See Needham v. State, 215 Ark. 935, 224 S.W. 2d 785 (1949). Thus the petitioner's argument is without merit.

Petitioner asserts a denial of equal protection of the laws, because the prosecuting attorney may charge either capital felony

murder or first-degree murder when the murder is committed in the perpetration of robbery or six other specified felonies. Cromwell v. State, 269 Ark. 104, 598 S.W. 2d 733 (1980). Essentially the same argument was rejected with respect to overlapping federal offenses in United States v. Batchelder, 442 U.S. 114 (1979). There the court held that where two federal statutes authorized different ranges of punishment for the same conduct, the prosecutor's discretionary decision to proceed under the more severe statute did not involve a denial of due process or equal protection. That case is controlling on the point now argued.

Petitioner's other principal arguments are: (1) Our standard of appellate review, as expressed upon Miller's original appeal, does not guarantee a proper review of the sentencing process; (2) the prohibition against double jeopardy precludes pecuniary gain's being considered as an aggravating circumstance in a case of murder in the perpetration of robbery (also argued in Hulsey); (3) the trial judge should have required a sequestered voir dire of each juror, although it was not requested; (4) our death penalty statute is unconstitutional (an issue raised on the direct appeal); and (5) the failure of Miller's counsel to raise arguments such as those now presented amounted to ineffective assistance. As in Hulsey, these arguments do not show that the original proceeding was void and hence do not call for postconviction relief.

Petition denied.